

The Honorable

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Skagit County,

Plaintiff,

No.

v.

COMPLAINT

JURY TRIAL DEMANDED

JUUL Labs, Inc. f/k/a PAX Labs, Inc.; PAX
Labs, Inc.; Eonsmoke LLC; Altria Group, Inc.;
Altria Client Services; Altria Group Distribution
Company; Nu Mark LLC; and Nu Mark
Innovations, Ltd.,

Defendants.

COMPLAINT
JURY TRIAL DEMANDED
()

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I. INTRODUCTION

1. One of the great public health success stories over the past decade has been a reduction in youth tobacco use and in nicotine addiction. Youth smoking rates plummeted from 28% in 2000 to 7.6% in 2017.¹ This success has been the result of years of litigation and strict regulation. It is also due to a public health message that Big Tobacco can no longer dispute or contradict, and which is simple, stark, and effective: smoking kills.

2. This incredible progress towards eliminating youth use of tobacco products has now largely been reversed due to e-cigarettes and vaping. Between 2017 and 2018, e-cigarette use increased 78% among high school students nationwide, from 11.7% of high school students in 2017 to 20.8% of high schoolers in 2018.² Among middle school students, e-cigarette use increased 48% between 2017 and 2018.³ The increase in youth nicotine vaping from 2017 to 2018 was the largest for any substance tracked by the national Monitoring the Future surveys over the past 44 years.⁴ Youth vaping rates continued to climb from 2018 to 2019, such that vaping prevalence more than doubled among each grade level surveyed—8th, 10th, and 12th graders—in the past two years.⁵ In 2018, 3.6 million middle and high school students reported

¹ Meredith Berkman, *Testimony of Meredith Berkman, Parents Against Vaping E-cigarettes*, U.S. House Committee on Oversight & Reform (July 24, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Berkman-PAVe%20Testimony.pdf>.

² Jerome Adams, *Surgeon General's Advisory on E-cigarette Use Among Youth*, Ctrs. for Disease Control & Prevention (Dec. 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

³ *2018 NYTS Data: A startling rise in youth e-cigarette use*, U.S. Food & Drug Admin. (Feb. 2, 2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use>.

⁴ Richard Miech, Ph.D. et al., *Trends in Adolescent Vaping*, 381 New Eng. J. Med. 1490-91 (2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1910739>.

⁵ *Id.*

1 using e-cigarettes, an increase of 1.5 million youth.⁶ This record increase was repeated between
 2 2018 and 2019, bringing the number of youth e-cigarette users to over 5 million.⁷

3 3. Consistent with these national numbers, Skagit County youth are vaping at high
 4 rates—which continue to climb. E-cigarette use among 8th graders is higher than the statewide
 5 average, and use among 10th graders increased from 11% to 18% in just two years.⁸ E-cigarette
 6 use among Skagit County 12th graders increased from 18% to 29% over that same time period.⁹

7 4. According to the Centers for Disease Control and Prevention (“CDC”) Director
 8 Robert Redfield, “The skyrocketing growth of young people’s e-cigarette use over the past year
 9 threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk for
 10 nicotine addiction.”¹⁰ Former U.S. Food and Drug Administration (“FDA”) Commissioner Scott
 11 Gottlieb described the above statistics as “astonishing,” and both the FDA and the U.S. Surgeon
 12 General have characterized youth vaping as an “epidemic.”¹¹ The Secretary of the U.S.
 13
 14
 15
 16
 17

18 ⁶ 2018 NYTS Data, *supra* note 3.

19 ⁷ *Youth Tobacco Use: Results from the National Youth Tobacco Survey*, U.S. Food & Drug Admin. (2019),
<https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey#1>.

20 ⁸ Jennifer Johnson & Howard Leibrand, M.D., *Smoking and Vaping Laws in Washington: State Laws & Local*
Policy Options, Skagit County Pub. Health (July 18, 2019),
 21 [https://www.skagitcounty.net/Health/Documents/Vaping/VapPrProducts_HealthConcernsSummary_Final_7.18.20](https://www.skagitcounty.net/Health/Documents/Vaping/VapPrProducts_HealthConcernsSummary_Final_7.18.2018.pdf)
 22 [18.pdf](https://www.skagitcounty.net/Health/Documents/Vaping/VapPrProducts_HealthConcernsSummary_Final_7.18.2018.pdf); *County-level HYS 2018 press release estimates*, Wash. State Healthy Youth Survey (Mar. 18, 2019),
<https://www.askhys.net/Docs/County-level%20HYS%202018%20press%20release%20estimates%203-4-19.xlsx>.

⁹ *Id.*

23 ¹⁰ Amir Vera, *Texas governor signs law increasing the age to buy tobacco products to 21*, CNN (June 8, 2019),
[https://www-m.cnn.com/2019/06/08/health/texas-new-tobacco-](https://www-m.cnn.com/2019/06/08/health/texas-new-tobacco-law/index.html#:~:targetText=Supporters%20say%20increasing%20the%20minimum,go%20into%20effect%20September%201.7r=https%3A%2F%2Fwww.google.com%2F)
 24 [law/index.html#:~:targetText=Supporters%20say%20increasing%20the%20minimum,go%20into%20effect%20S](https://www-m.cnn.com/2019/06/08/health/texas-new-tobacco-law/index.html#:~:targetText=Supporters%20say%20increasing%20the%20minimum,go%20into%20effect%20September%201.7r=https%3A%2F%2Fwww.google.com%2F)
[eptember%201.7r=https%3A%2F%2Fwww.google.com%2F](https://www-m.cnn.com/2019/06/08/health/texas-new-tobacco-law/index.html#:~:targetText=Supporters%20say%20increasing%20the%20minimum,go%20into%20effect%20September%201.7r=https%3A%2F%2Fwww.google.com%2F).

25 ¹¹ Angelica LaVito, *FDA chief Gottlieb threatens to pull e-cigarettes off market if ‘astonishing’ surge in teen use*
 26 *doesn’t slow*, CNBC (Nov. 16, 2018), [https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-](https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-cigarettes-off-market.html)
[cigarettes-off-market.html](https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-cigarettes-off-market.html); Jayne O’Donnell, *FDA declares youth vaping an epidemic, announces investigation,*
new enforcement, USA Today (Sept. 12, 2018), [https://www.usatoday.com/story/news/politics/2018/09/12/fda-](https://www.usatoday.com/story/news/politics/2018/09/12/fda-scott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/)
[scott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/](https://www.usatoday.com/story/news/politics/2018/09/12/fda-scott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/).

1 Department of Health and Human Services declared that “[w]e have never seen use of any
2 substance by America’s young people rise as rapidly as e-cigarette use [is rising].”¹²

3 5. A major cause of this epidemic is Defendant JUUL Labs, Inc., the maker of the
4 JUUL e-cigarette. JUUL entered the e-cigarette market in 2015 and now controls over 70% of
5 it.¹³ Over a million JUUL e-cigarettes were sold between 2015 and 2017.¹⁴ In 2017, JUUL
6 generated over \$224 million in retail sales, a 621% year-over-year increase.¹⁵ By June 2018,
7 sales had skyrocketed another 783%, reaching \$942.6 million.¹⁶ The e-cigarette category as a
8 whole grew 97% to \$1.96 billion in the same period, largely based on JUUL’s market success.¹⁷
9 JUUL’s dominance of the e-cigarette market has been so rapid, and so complete, that the act of
10 vaping is now often referred to as “juuling.”
11

12 6. Other companies have noticed this success and capitalized on it. Defendant
13 Eonsmoke, LLC (“Eonsmoke”) explicitly traded on JUUL’s market share, promoting its own
14 products as “JUUL compatible” and using JUUL’s hashtags to market and sell its products to
15 JUUL users. Eonsmoke understood that many JUUL users were youth and marketed its products
16 to these children, initiating a successful “Doit4juul” social media campaign and offering its
17
18
19

20 ¹² Jan Hoffman, *Study Shows Big Rise in Teen Vaping This Year*, N.Y. Times (Dec. 17, 2018),
21 <https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html>; Rajiv Bahl, *Teen Use of Flavored Tobacco was Down, But E-Cigarettes Are Bringing It Back Up*, Healthline (Jan. 9, 2019),
22 <https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit>.

23 ¹³ Richard Craver, *Juul ends 2018 with 76 percent market share*, Winston-Salem J. (Jan. 8, 2019),
24 https://www.journalnow.com/business/juul-ends-with-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html.

25 ¹⁴ Melia Robinson, *How a startup behind the ‘iPhone of vaporizers’ reinvented the e-cigarette and generated \$224 million in sales in a year*, Bus. Insider (Nov. 21, 2017), <https://www.businessinsider.com/juul-e-cigarette-one-million-units-sold-2017-11/>.

26 ¹⁵ *Id.*

¹⁶ Angelica LaVito, *Popular e-cigarette Juul’s sales have surged almost 800 percent over the past year*, CNBC Health & Sci. (Sept. 11, 2018), <https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html>.

¹⁷ *Id.*

JUUL-compatible pods with flavors including “Sour Gummy,” “Pineapple Crush,” and “Pink Lemonade.”¹⁸

7. JUUL’s market dominance also attracted the attention of government regulators, including the FDA. On February 24, 2018, the FDA sent a letter to JUUL expressing concern about the popularity of its products among youth and demanding that JUUL produce documents regarding its marketing practices.¹⁹ On September 12, 2018, the FDA sent letters to JUUL and other e-cigarette manufacturers putting them on notice that their products were being used by youth at disturbing rates.²⁰ In October 2018, the FDA raided JUUL’s headquarters and seized more than a thousand documents relating to JUUL’s sales and marketing practices.²¹ As of November 2019, the FDA, the Federal Trade Commission, multiple state attorneys general, and the U.S. House of Representatives Committee on Oversight and Reform have all commenced investigations into JUUL’s role in the youth vaping epidemic and whether JUUL’s marketing practices purposefully targeted youth.

8. As the pressure on JUUL intensified in late 2018, Altria—maker of Marlboro cigarettes, parent company of Philip Morris USA, and one of the largest tobacco companies in the world—stepped in to assist. On December 20, 2018, Altria announced a \$12.8 billion equity investment in JUUL, which gave it a 35% stake in the company. Just several weeks prior to this

¹⁸ Letter from Ann Simoneau, J.D., Director FDA Center for Tobacco Products’ Office of Compliance and Enforcement, to Kelly L. Zeller, General Manager, Eonsmoke, LLC (“Eonsmoke, LLC Warning Letter”) (Oct. 24, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/eonsmoke-llc-592097-10242019>.

¹⁹ Letter from Matthew R. Holman, Ph.D., Director of the FDA’s Center for Tobacco Products’ Office of Science, to Ziad Rouag, JUUL Labs, Inc. (Apr. 14, 2018), <https://www.fda.gov/media/112339/download>.

²⁰ Letter from Scott Gottlieb, M.D., FDA Commissioner, to Kevin Burns, JUUL Labs, Inc. (Sept. 12, 2018), <https://www.fda.gov/media/119669/download>.

²¹ Laurie McGinley, *FDA seizes Juul e-cigarette documents in surprise inspection of headquarters*, Wash. Post (Oct. 2, 2018), <https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/>.

1 announcement, Altria had criticized JUUL’s marketing practices in a letter to the FDA and
 2 declared that “pod-based products significantly contribute to the rise in youth use of e-vapor
 3 products.” Altria removed its own pod-based products, the MarkTen Elite and Apex by
 4 MarkTen, from the market—only to commit its substantial resources, regulatory knowledge, and
 5 lobbying muscle to protecting and expanding JUUL’s market share, which, as Altria and JUUL
 6 both know, relies heavily on youth.
 7

8 9. JUUL and Altria are now describing their collaboration as a “harm reduction
 9 opportunity,” and JUUL insists it never marketed to youth. These assertions fall flat against the
 10 facts, as detailed below. Altria has described JUUL’s device as “compelling” and “a terrific
 11 product.” In fact, JUUL has compelled a generation of youth, who were never cigarette smokers,
 12 into nicotine addiction and put them at risk for severe lung injury or other health harms resulting
 13 from aerosol inhalation. JUUL and Altria are working to maintain JUUL’s record-breaking sales
 14 and market dominance—which is not possible if the customer base is only adult smokers seeking
 15 to quit.
 16

17 10. Plaintiff Skagit County brings this action against Defendants JUUL Labs, Inc.
 18 f/k/a PAX Labs, Inc. (“JUUL”), PAX Labs, Inc., Eonsmoke, LLC, and Altria Group, Inc. and its
 19 subsidiaries Altria Client Services, Altria Group Distribution Company, and Nu Mark, LLC, and
 20 Nu Mark Innovations, Ltd (collectively “Altria Defendants”), for damages and injunctive relief,
 21 including abatement of the public health crisis caused by Defendants’ wrongful conduct.
 22

23 II. JURISDICTION AND VENUE

24 11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
 25 1331 because Plaintiff’s racketeering claim arises under the laws of the United States, 18 U.S.C.
 26 § 1961, *et seq.*, and pursuant to 28 U.S.C. § 1332(a) because: (i) the amount in controversy

1 exceeds \$75,000, exclusive of interests and costs, and (ii) the plaintiff and defendants are citizens
 2 of different states. This Court has supplemental jurisdiction over the state law claims pursuant to
 3 28 U.S.C. § 1367.

4 12. The Court has personal jurisdiction over Defendants because they do business in
 5 the Western District of Washington and have sufficient minimum contacts with this District.
 6 Defendants intentionally avail themselves of the markets in this State through the promotion,
 7 marketing, and sale of the products at issue in this lawsuit, and by retaining the profits and
 8 proceeds from these activities, to render the exercise of jurisdiction by this Court permissible
 9 under Washington law and the U.S. Constitution.
 10

11 13. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
 12 1391 (b)(2) and (3) because a substantial part of the events or omissions giving rise to the claims
 13 at issue in this Complaint arose in this District and Defendants are subject to the Court's personal
 14 jurisdiction with respect to this action.
 15

16 III. PARTIES

17 14. Plaintiff Skagit County ("Plaintiff" or "Skagit County" or "County") is a
 18 Washington County organized and existing under the laws of the State of Washington, RCW
 19 36.01 *et seq.*
 20

21 15. Defendant JUUL Labs, Inc., f/k/a PAX Labs, Inc. ("JUUL"), incorporated in
 22 Delaware on March 12, 2007 (file no. 4315504), and has its principal place of business in San
 23 Francisco, California. JUUL manufactures, designs, sells, markets, promotes and distributes
 24 JUUL e-cigarettes, JUULpods and accessories.

25 16. Defendant PAX Labs, Inc., incorporated in Delaware on April 21, 2017 (file no.
 26 6387684), has its principal place of business in San Francisco, California. PAX Labs, Inc.'s

1 current website says it was founded in 2007. For much of the relevant time period and until at
2 least 2017, PAX Labs, Inc. and JUUL operated as the same company. During that time, JUUL
3 manufactured, designed, sold, marketed, promoted, and distributed JUUL e-cigarettes,
4 JUULpods, and accessories as a part of PAX Labs, Inc.

5
6 17. Defendant Eonsmoke, LLC, is a New Jersey limited liability company with its
7 principal place of business in Clifton, New Jersey. Eonsmoke markets and sells “Juul
8 Compatible” Eonsmoke and Eonsmoke v2.0 electronic vapor devices and flavor pods, as well as
9 4X pods.

10 18. Defendant Altria Group, Inc. is a Virginia corporation, having its principal place
11 of business in Richmond, Virginia. Altria is one of the world’s largest producers and marketers
12 of tobacco products. On December 20, 2018, Altria purchased a 35% stake in JUUL.

13
14 19. Defendant Altria Client Services Inc. is a New York corporation and wholly
15 owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico County,
16 Virginia. Altria Client Services Inc. provides Altria Group, Inc. and its companies with services
17 in many areas including digital marketing, packaging design & innovation, product development,
18 and safety, health, and environmental affairs. On September 25, 2019, the former senior vice
19 president and chief growth officer of Altria Client Services Inc., K.C. Crosthwaite, became the
20 new chief executive of JUUL.

21
22 20. Defendant Altria Group Distribution Company is a Virginia corporation and
23 wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico
24 County, Virginia. Altria Group Distribution Company provides sales, distribution and consumer
25 engagement services to Altria’s tobacco companies.
26

21. Defendant Nu Mark LLC is a Virginia corporation and wholly owned subsidiary of Altria Group, Inc., with its principal place of business in Richmond, Virginia. Nu Mark LLC was engaged in the manufacture and sale of Altria’s electronic vapor products. Shortly before Altria purchased a 35% stake in JUUL in December 2018, Altria Group, Inc. announced that Nu Mark would be discontinuing the production and sale of all e-vapor products.

22. Defendant Nu Mark Innovations, Ltd. is a subsidiary of Nu Mark LLC located in Beit Shemesh, Israel. Nu Mark Innovations, Ltd. provides digital marketing and customer care services for Nu Mark LLC and Altria’s e-vapor brands, as well as product and technology development services.

IV. ALLEGATIONS OF FACT

A. Redesigning “the Most Successful Consumer Product of All Time”

23. JUUL was founded by Adam Bowen and James Monsees. The company’s beginnings can be traced to the pair’s collaboration on a product design master’s thesis when they were graduate students at Stanford University in 2004—Monsees completing a Master of Fine Arts in Product Design, and Bowen a Master of Science in Mechanical Engineering in Product Design.²² Their proposed product? A better cigarette.

²² Allison Keeley, *Vice Made Nice?*, Stan. Mag. (Aug. 2012), <https://stanfordmag.org/contents/vice-made-nice>.



Adam Bowen and James Monsees Source: Juul

24. Monsees has described the cigarette as “the most successful consumer product of all time . . . an amazing product.”²³ But years of anti-smoking campaigns have successfully de-normalized cigarette smoking. As part of their thesis research, Monsees and Bowen interviewed smokers who talked about feeling self-conscious of the signs of smoking, for example, coming back into a room after a smoke break and smelling like smoke, or having their hands smell like cigarettes no matter even after washing them multiple times.²⁴ When Monsees and Bowen presented their thesis and product design to their classmates, they closed with a clip from a South Park episode showing the characters assembled at the Museum of Tolerance and shaming a smoker.²⁵ Their goal was to design a cigarette without the stigma and self-consciousness smokers experienced—as Monsees described it, to “deliver[] solutions that refresh the magic and luxury

²³ Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground (Jan. 2015), <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

²⁴ Jordan Crook, *This is the Stanford thesis presentation that launched Juul*, Tech Crunch (Feb. 27, 2019), <https://techcrunch.com/2019/02/27/this-is-the-stanford-thesis-presentation-that-launched-juul/>.

²⁵ *Id.*

1 of the tobacco category” and recreate the lost “ritual and elegance that smoking once
2 exemplified.”²⁶

3 25. Essentially, Monsees and Bowen saw a market opportunity in a generation of
4 consumers brought up on anti-smoking norms. In Monsees’ words, they wanted to redesign the
5 cigarette “to meet the needs of people who want to enjoy tobacco but don’t self-identify with—
6 or don’t necessarily want to be associated with—cigarettes.”²⁷ Monsees saw “a huge opportunity
7 for products that speak directly to those consumers who aren’t perfectly aligned with traditional
8 tobacco products.”²⁸

10 26. At one point during their thesis presentation, Monsees states, “The cigarette is
11 actually a carefully engineered product for nicotine delivery and addiction.”²⁹ This description
12 applies just as well to the product he and Bowen would launch a decade later—JUUL.

14 27. The outcome of Monsees and Bowen’s thesis project was a “heat-not-burn” e-
15 cigarette, which uses loose-leaf tobacco. The device heated tobacco contained in pods to a
16 constant temperature, vaporizing nicotine and flavor without burning the materials or producing
17 smoke.

18 28. After graduation, Bowen and Monsees worked on bringing their thesis project to
19 the market, incorporating under the name Ploom in 2007. In those early years, they spent a lot of
20 time talking about what Bowen called “the kind of typical thoughts of evil Big Tobacco
21 companies like coming down and squashing you.”³⁰ But ultimately, that “was not really an
22

23
24 ²⁶ *Onboardly Interview with Ploom Cofounder and CEO James Monsees*, Pax.com,
<https://web.archive.org/web/20161108110231/http://onboardly.com/entrepreneur-interviews/an-interview-with-james-monsees/> (last visited Nov. 7, 2019).

25 ²⁷ *Id.*

26 ²⁸ *Id.*

²⁹ See Crook, *supra* note 24.

³⁰ Keeley, *supra* note 22.

1 issue.”³¹ In fact, not only did Big Tobacco not squash them, but the opposite. Although Bowen
 2 and Monsees characterized their products as aimed toward consumers not aligned with
 3 traditional tobacco products, they themselves have aligned with Big Tobacco on at least two
 4 occasions: first, with Japan Tobacco and then with Altria.

5 29. In 2010, Ploom launched its e-cigarette as the ModelOne, using pods of loose-leaf
 6 tobacco heated by butane. It did not catch on. Ploom only sold a few thousand of them. By then a
 7 company with a dozen employees, Ploom was faltering, in need of money, technological
 8 expertise, and marketing savvy.³²

9 30. Help came from Japan Tobacco International (“JTI”), a division of Japan Tobacco
 10 Inc., the fourth-largest tobacco company in the world. In December 2011, JTI and Ploom entered
 11 into a strategic agreement, which gave JTI a minority stake in Ploom and made it a strategic
 12 partner. In a statement regarding the agreement, Monsees said, “We are very pleased to partner
 13 with JTI as their deep expertise, global distribution networks and capital resources will enable us
 14 to enter our next phase of growth and capitalize on global expansion opportunities.”³³ As Bowen
 15 explained in an interview, “We were still doing a lot of our own internal product development,
 16 but now we had access to floors of scientists at JTI.”

17 31. In 2012, Ploom unveiled the PAX, a loose-leaf vaporizer that didn’t use pods, but
 18 which was much more successful. The following year, Ploom combined elements of the PAX
 19 with the pod system as the ModelTwo. Although consumers were enthusiastic about both the
 20
 21
 22

23
 24 ³¹ *Id.*

25 ³² David H. Freedman, *How Do You Sell a Product When You Can't Really Say What It Does?*, Inc.com (May
 26 2014), <https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html>.

³³ *Innovative Partnership for Ploom and Japan Tobacco International JTI to Take Minority Share in Ploom*, Japan Tobacco Int’l (Dec. 8, 2011), <https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf>.

1 PAX and the ModelTwo, the products were limited to a small, high-end market. The PAX, for
 2 example, retailed for \$250 when it was first marketed. But, as one of Ploom's investors remarked
 3 in 2014, "The company is going to invade the bigger, lower-end market now dominated by e-
 4 cigarettes."³⁴ He explained that Ploom had "lots of products in the works" and that "we know we
 5 need something cheaper than PAX to go after the mass market. There are still huge opportunities
 6 out there."³⁵

8 32. In February 2015, Ploom and JTI ended their relationship, with buying back JTI's
 9 minority stake in the business. JTI acquired the ModelTwo and pods product line, as well as the
 10 Ploom name, while Ploom kept its open-system PAX vaporizer and changed its name to PAX
 11 Labs Inc. Monsees characterized the partnership as having "afforded both parties many mutual
 12 benefits," but said that the new arrangement would "fuel continued growth" and that PAX
 13 intended "rapid rollouts of new products."³⁶

15 33. PAX made good on its promise of new products and invading the bigger, lower-
 16 end market. As discussed further below, PAX launched the JUUL in June 2015 with a well-
 17 publicized launch party in New York City and a viral social media marketing campaign.

18 34. The company renamed itself JUUL Labs, Inc. in 2017.

19 35. By the close of 2017, according to Nielsen data, JUUL had surpassed its
 20 competitors in capturing 32.9 percent of the e-cigarette market, with British American Tobacco
 21

25 ³⁴ Freedman, *supra* note 32.

26 ³⁵ *Id.*

³⁶ *JTI to Acquire Ploom Product Line*, Convenient Store News (Feb. 16, 2015), <https://csnews.com/jti-acquire-ploom-product-line#close-olyticsmodal>.

at 27.4 percent and Altria at 15.2 percent.³⁷ The total e-cigarette market expanded 40 percent to \$1.16 billion.³⁸

36. In 2018, JUUL's gross profit margins were 70%³⁹ and it represented 76.1% of the national e-cigarette market.⁴⁰ In a complaint it filed in November 2018 against 24 vape companies for alleged patent infringement, JUUL asserted that it was "now responsible for over 95% of the growth in the ENDS pod refill market in the United States" and included the following chart:⁴¹

Appendix 5: U.S. ENDS Pod Market Retail Unit Sales Growth 2018

4-Week Unit Sales by End Date

| | Nielsen | | | IRI | | |
|--------------|------------|------------|-----------------|------------|------------|-----------------|
| | Apr 21 | Sep 8 | Share of Growth | Apr 22 | Sep 9 | Share of Growth |
| Total Market | 36,002,645 | 55,773,039 | 100% | 29,546,883 | 50,793,955 | 100% |
| Juul | 22,618,886 | 41,501,172 | 95.5% | 14,964,158 | 35,166,120 | 95.1% |
| Vuse | 6,385,922 | 6,172,595 | -1.1% | 7,204,900 | 7,409,312 | 1.0% |
| MarkTen | 3,677,300 | 4,240,285 | 2.8% | 2,904,168 | 3,230,237 | 1.5% |
| Logic | 1,785,167 | 2,018,023 | 1.2% | 1,928,841 | 1,876,006 | -0.2% |
| Blu | 1,062,360 | 1,461,127 | 2.0% | 1,305,209 | 1,937,225 | 3.0% |
| Other | 473,010 | 379,837 | -0.5% | 1,239,607 | 1,175,055 | -0.3% |

³⁷ Ari Levy, *E-cigarette maker Juul is raising \$150 million after spinning out of vaping company*, CNBC (Dec. 20, 2017), <https://www.cnbc.com/2017/12/19/juul-labs-raising-150-million-in-debt-after-spinning-out-of-pax.html>.

³⁸ *Id.*

³⁹ Dan Primack, *Scoop: The Numbers Behind Juul's Investor Appeal*, Axios (July 2, 2018), <https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>.

⁴⁰ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market 2*, Stan. Res. into the Impact of Tobacco Advert. (2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

⁴¹ Verified Complaint Under Section 337 of the Tariff Act of 1930 at 6, *In the Matter of Certain Cartridges for Elec. Nicotine Delivery Sys. & Components Thereof*, Investigation No. 337-TA-1141 (USITC Nov. 19, 2018).

37. JUUL shattered previous records for reaching decacorn status, reaching valuation of over \$10 billion in a matter of months—four times faster than Facebook.⁴² This all came just three years after its product launch.

B. Following Big Tobacco’s Footsteps

38. JUUL’s staggering commercial success didn’t come from a blank slate. Under the Master Settlement Agreement between Big Tobacco and the States, the public has access to hundreds of thousands of Big Tobacco’s internal documents. In creating JUUL, Monsees and Bowen carefully studied the marketing strategies, advertisements, and product design of Big Tobacco. As Monsees candidly acknowledged, the internal tobacco documents “became a very intriguing space for us to investigate because we had so much information that you wouldn’t normally be able to get in most industries. And we were able to catch-up, right, to a huge, huge industry in no time. And then we started building prototypes.”⁴³

39. Monsees, Bowen, and their employees reviewed documents in the Big Tobacco archive that included information on how to manipulate nicotine pH to maximize nicotine delivery in a vapor while minimizing the “throat hit” that may potentially deter new smokers. Chenyue Xing, a chemist who worked for JUUL (then called PAX Labs) and helped patent its liquid-nicotine formula, told Reuters that she recalled reviewing tobacco company records and research. “We had consultants who were veterans of the big tobacco companies,” she said. “We learned all the history.”⁴⁴

⁴² Zack Guzman, *Juul Surpasses Facebook As Fastest Startup to Reach Decacorn Status*, Yahoo! Fin. (Oct. 9, 2018), <https://finance.yahoo.com/news/juul-surpasses-facebook-fastest-startup-reach-decacorn-status-153728892.html>.

⁴³ Montoya, *supra* note 23.

⁴⁴ Chris Kirkham, *Juul disregarded early evidence it was hooking teens*, Reuters (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

1 40. R.J. Reynolds had researched the addition of organic acids to reduce a cigarette's
2 harshness while adding more nicotine, and JUUL followed this approach. JUUL added benzoic
3 acid to its nicotine liquid formula, which both reduced the nicotine's harshness and delivered it
4 more directly to the user's lungs and brain.⁴⁵ The freebase nicotine in earlier e-cigarettes was
5 partly absorbed in the user's mouth and throat, resulting in a much slower absorption by the
6 body.
7

8 41. JUUL's new nicotine salts formulation was potent. Early testing sometimes
9 caused testers to shake or vomit.⁴⁶ JUUL contemplated features that would automatically disable
10 the device after nicotine delivery exceeded a certain threshold; according to Xing, one idea was
11 to disable the device for 30 minutes following a certain number of puffs.⁴⁷ But in the end JUUL
12 launched its product without any such features.
13

14 42. Instead, JUUL's sales force emphasized the addictiveness of its formulation to
15 persuade retailers to give the new product shelf space. Vincent Latronica, head of East Coast
16 sales and distribution for JUUL (then called PAX Labs) from 2014 until early 2016, told Reuters
17 that he used a chart showing JUUL's rapid delivery of nicotine to the bloodstream as a way to
18 convince store owners that they would have repeat business and not be left with unsold
19 inventory, and this became a central selling point for the new product.⁴⁸ JUUL's sales team was,
20 in Latronica's words, "relentless."⁴⁹
21
22
23

24 ⁴⁵ *Id.*

25 ⁴⁶ *Id.*

26 ⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

1 43. Other records from the Big Tobacco archive relate to tobacco industry market
 2 strategies and advertisements designed to lure non-smoking youth. Monsees and Bowen were
 3 able to take advantage of an extensive online tobacco advertising research database maintained
 4 by the Stanford Research into the Impact of Tobacco Advertising (“SRITA”), an inter-
 5 disciplinary research group devoted to researching the promotional activities of the tobacco
 6 industry. SRITA’s database contains approximately 50,000 original tobacco advertisements.
 7 According to Monsees, JUUL’s advertising was informed by traditional tobacco advertisements,
 8 and SRITA in particular had been very useful to JUUL.⁵⁰

10 44. It is no secret that a good portion of the Big Tobacco playbook involved targeting
 11 youth. Beginning in the 1950s, Philip Morris—now JUUL’s corporate affiliate—intentionally
 12 marketed cigarettes to young people under the age of 21 to recruit “replacement smokers” to
 13 ensure the economic future of the tobacco industry.⁵¹ Philip Morris knew that youth smoking
 14 was essential to the tobacco industry’s success and longevity, as an internal Philip Morris
 15 document makes clear: “It is important to know as much as possible about teenage smoking
 16 patterns and attitudes. Today’s teenager is tomorrow’s potential regular customer, and the
 17 overwhelming majority of smokers first begin to smoke while still in their teens.”⁵² Tobacco
 18 companies have focused on the 14 to 24-year-old age group because “young smokers have been
 19 the critical factor in the growth” of their business.⁵³ As the Vice-President of Marketing at R.J.
 20 Reynolds Tobacco Company [“RJR”] explained in 1974, the “young adult market . . .
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 22
 23
 24

⁵⁰ Jackler et al., *supra* note 40 at 27.

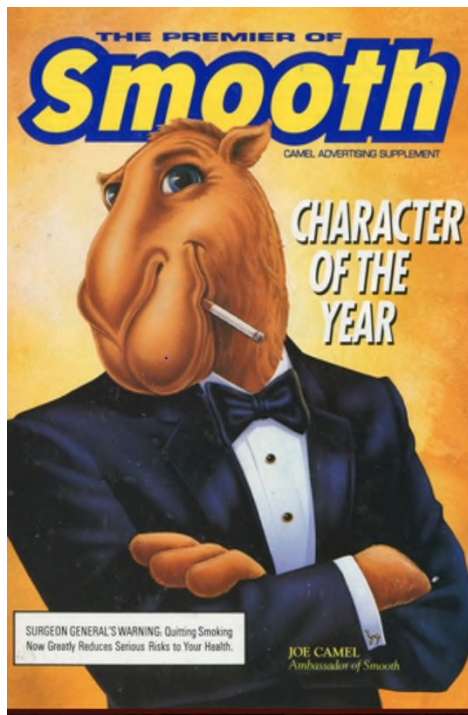
⁵¹ Amended Final Opinion at 972, *U.S. v. Philip Morris*, No. 99- 2496 (D.D.C. Aug. 17, 2006), ECF No. 5750.

⁵² *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids (May 14, 2001),
<https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

⁵³ *Id.*

1 represent[s] tomorrow's cigarette business. As this 14-24 age group matures, they will account
 2 for a key share of the total cigarette volume—for at least the next 25 years.”⁵⁴

3 45. RJR's now-infamous Joe Camel “ambassador of Cool” advertising campaign,
 4 which ran from 1988 through 1997, exemplifies the importance the tobacco industry placed on
 5 hooking young smokers early:⁵⁵



18 46. Big Tobacco, of course, is now prohibited from employing these tactics and
 19 strategies to market traditional cigarettes by virtue of the Master Settlement Agreement and
 20 subsequent regulations. But nothing prevented JUUL from doing so.
 21
 22
 23
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25 ⁵⁴ C.A. Tucker, *Marketing Plans Presentation to RJRI B of D*, U.C.S.F. Truth Tobacco Industry Documents (Sept.
 30, 1974), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=ypmw0091>.

26 ⁵⁵ *Joe Camel: Character of the Year Advertisement*, Stan. U. Res. into the Impact of Tobacco Advert. (1990),
[http://tobacco.stanford.edu/tobacco_main/images.php?token2=fin_st138.php&token1=fin_img4072.php&theme_](http://tobacco.stanford.edu/tobacco_main/images.php?token2=fin_st138.php&token1=fin_img4072.php&theme_file=fin_mt015.php&theme_name=Targeting%20Teens&subtheme_name=Joe%20Camel)
[file=fin_mt015.php&theme_name=Targeting%20Teens&subtheme_name=Joe%20Camel](http://tobacco.stanford.edu/tobacco_main/images.php?token2=fin_st138.php&token1=fin_img4072.php&theme_file=fin_mt015.php&theme_name=Targeting%20Teens&subtheme_name=Joe%20Camel).

1 **C. The Secret to JUUL's Success: Hooking Kids**

2 47. Because of Big Tobacco's demonstrated effectiveness at addicting youth to
3 nicotine, cigarette manufacturers operate under tight restrictions regarding their advertising and
4 marketing activities. By way of example, cigarette companies may not:

- 5 A. use outdoor advertising such as billboards;
6
7 B. sponsor events;
8
9 C. give free samples;
10
11 D. pay any person to "use, display, make reference to or use as a prop any
Tobacco Product, Tobacco Product package . . . in any "Media;"
12
13 E. pay any third party to conduct any activity which the tobacco
manufacturer is prohibited from doing; or
14
15 F. sell "flavored" cigarettes.

16 48. All of these above activities were prohibited because of their effectiveness at
appealing to youth. As described below, all of these activities figured prominently in JUUL's
marketing campaign.

17 49. According to Dr. Robert Jackler, an otolaryngologist and professor at Stanford
18 University School of Medicine and principal investigator for SRITA, JUUL's initial marketing
19 was "patently youth oriented."⁵⁶ The JUUL's 2015 ad campaign, called "Vaporized" was
20 designed to create a "cult-like following."⁵⁷ Its imagery featured a vivid color scheme and
21 models in their twenties in poses that researchers note are evocative of behaviors more
22 characteristic of underage teens than mature adults.⁵⁸ Dr. Jackler and his colleagues found it
23

24
25 ⁵⁶ Robert K. Jackler, *The Role of the Company in the Juul Teen Epidemic, Testimony of Robert Jackler before the*
House Subcommittee on Economic and Consumer Policy ("Jackler Testimony") at 2 (July 24, 2019),
26 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Jackler%20Testimony.pdf>.

⁵⁷ *Id.* at 4.

⁵⁸ Jackler et al., *supra* note 40.

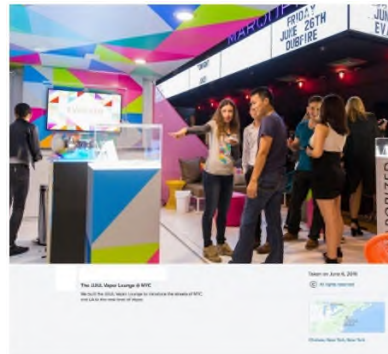
“clear” that this imagery resonated with underage teens who aspire to emulate trendsetting young adults.⁵⁹

50. Tobacco advertisers have long understood that teens are attracted to such imagery. The Vaporized campaign was featured on the front page of VICE magazine, “the #1 youth media company in the world.”⁶⁰ In the summer of 2015, an animated series of Vaporized billboards, with the campaign’s youth-appealing imagery, were displayed in New York’s Times Square.⁶¹

51. Over the first year after JUUL launched its ad campaign in June 2015, it held a series of at least 50 highly stylized parties, typically with rock music entertainment, in cities across the United States.⁶² Thousands of young people were given free nicotine-filled JUULpods (appropriately named “JUUL starter kits”), and JUUL posted photos of various young people enthusiastically puffing on JUULs across their social media channels.⁶³ JUUL also featured popular stars such as Katy Perry holding a JUUL at the Golden Globes.⁶⁴



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⁵⁹ *Id.* at 7.

⁶⁰ *Id.* at 5.

⁶¹ *Id.* at 17-18.

⁶² *Id.* at 3.

⁶³ *Id.*

⁶⁴ *Jackler Testimony*, *supra* note 56 at 8.

⁶⁵ Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, *Forbes* (Nov. 16, 2018), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>.

⁶⁶ *Id.*



Twitter

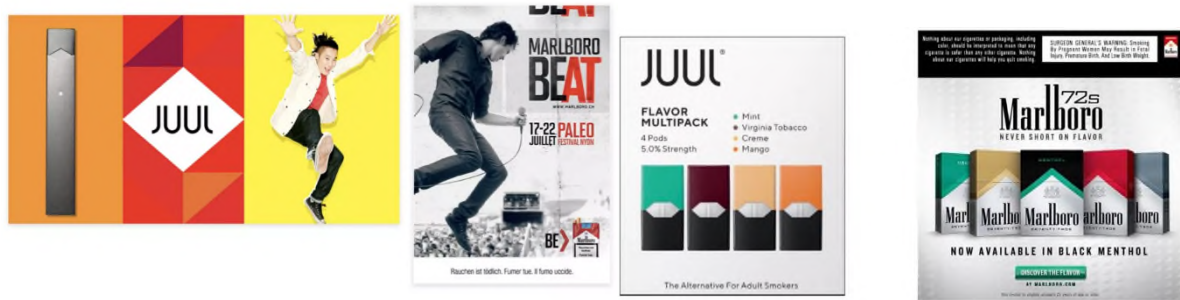


52. JUUL knew these images would be successful in achieving this result because it intentionally crafted them to mimic specific traditional tobacco advertisements that Big Tobacco had used to target teens. In fact, many of JUUL's ads are nearly identical to old cigarette ads that were designed to get teens to smoke. Like its Big Tobacco predecessors, the focus of JUUL's initial marketing was on colorful ad campaigns using eye-catching designs and youth-oriented

imagery with themes of being cool, carefree, stylish, attractive, sexy, and popular—unusual themes and images if one’s objective is to promote an adult’s only smoking cessation device.



67



68

53. JUUL used Big Tobacco’s advertising imagery, but coupled it with a modern, state-of-the-art marketing campaign designed to target youth. It relied heavily on social media, crafting a powerful online presence, which persists even after JUUL deleted its accounts in the face of mounting public scrutiny. JUUL was particularly active on Instagram, which is the most popular social media site among teens.⁶⁹ JUUL cultivated hashtags, allowing it to blend its ads in

⁶⁷ *Virginia Slims vs Juul Advertisement*, Stan. U. Res. into the Impact of Tobacco Advert. (2015), http://tobacco.stanford.edu/tobacco_main/images-comp.php?token2=fm_tn_st328.php&token1=fm_tn_img10799.php&theme_file=fm_tn_mt035.php&theme_name=Cigs%20vs.%20eCigs&subtheme_name=Cigs%20vs%20eCigs%20JUUL.

⁶⁸ Julia Belluz, *The Vape Company Juul Said It Doesn’t Target Teens. Its Early Ads Tell a Different Story*, Vox (Jan. 25, 2019), <https://www.vox.com/2019/1/25/18194953/vape-juul-e-cigarette-marketing>.

⁶⁹ Jackler et al., *supra* note 40.

1 with wide range of user content, increasing exposure while concealing the commercial nature of
 2 the content.⁷⁰ JUUL then used hashtags to reinforce the themes it crafted in its product design,
 3 like #style, #technology, #smart, and #gadget. JUUL's hashtags attracted an enormous
 4 community of youthful posts on a wide array of subjects. According to Dr. Jackler, #Juul
 5 contains literally thousands of juvenile postings, and numerous Instagram hashtags contain the
 6 JUUL brand name.⁷¹

8 54. Even after JUUL halted its own social media posts in November 2018, viral peer-
 9 to-peer promotion among teens insured continued corporate and product visibility among
 10 youth.⁷² In fact, community posts about JUUL increased after JUUL itself quit social media in
 11 the Fall of 2018. Prior to November 2018, over a quarter of a million posts appeared. In the eight
 12 months *after* JUUL halted its promotional postings, the rate of community postings increased
 13 significantly, resulting in the number of posts doubling to over half a million.⁷³

15 55. JUUL also paid social media influencers to post photos of themselves with JUUL
 16 devices and to use the hashtags that it was cultivating.⁷⁴ JUUL entered a contract with an
 17 advertising agency specifically to identify and recruit social media influencers that had at least
 18 30,000 followers to, according to an internal JUUL email, "establish a network of creatives to
 19 leverage as loyalists" for the JUUL brand.⁷⁵ One such influencer was Christina Zayas, whom
 20 JUUL paid \$1,000 for just one blog post and one Instagram post in the Fall of 2017.

23 ⁷⁰ *Id.* at 23.

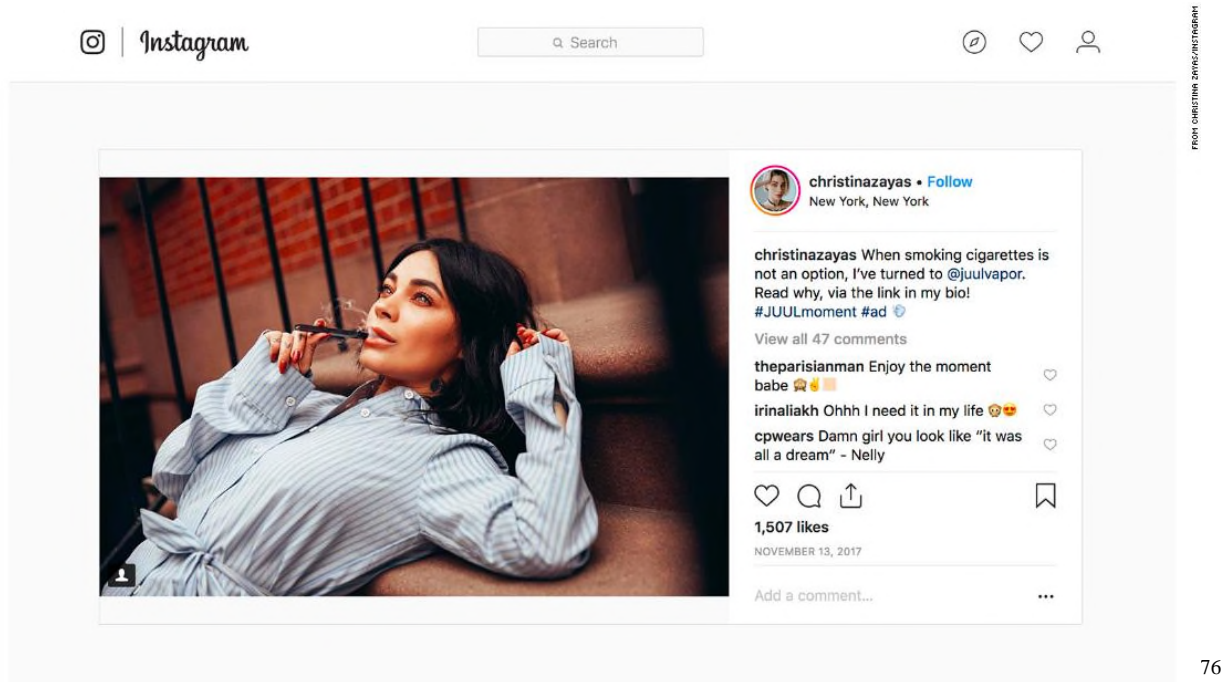
24 ⁷¹ *Jackler Testimony*, *supra* note 56 at 10.

24 ⁷² *Id.* at 11.

25 ⁷³ *Id.*

25 ⁷⁴ Jackler et al., *supra* note 40.

26 ⁷⁵ Kenrick Cai, *Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel Charges*, *Forbes* (July 25, 2019), <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#57735a4a33e2>.



56. JUUL instituted an “affiliate program” to recruit those who authored favorable reviews of its products by providing such reviewers with a 20% discount of purchases of JUUL products.⁷⁷ It even recruited JUUL users to act as part of their marketing team by asking users to “refer a friend and get a discount.”⁷⁸

57. Such tactics masked what were in fact JUUL advertisements as user content, further increasing exposure and ultimately solidifying the company in teen pop culture as a form of cultural currency and a status symbol. JUUL’s strategy was so successful in embedding its products into pop culture that it entered the vernacular as a verb. The term “juuling” also erases the connection to terms like “smoking” or “e-cigarette,” which could alert users to the true nature of the activity. A recent study found that 63% of adolescent JUUL users did not know that

⁷⁶ Michael Nedelman et al., *#Juul: How social media hyped nicotine for a new generation*, CNN Health (Dec. 19, 2018), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

⁷⁷ *Id.* at 9-10.

⁷⁸ *Id.* at 9.

JUULpods contain nicotine.⁷⁹ This has worked to JUUL's advantage and was in fact a deliberate part of its strategy. In the first year after its launch, not one of JUUL's 171 promotional emails said anything about nicotine content,⁸⁰ and it did not include nicotine warnings on the JUUL packaging until August 2018, when it was forced to do so.

58. The design of JUUL's product is also acutely attractive to youth. Unlike most of its predecessors, JUUL looks nothing like a cigarette. Instead, JUUL is sleek and linear and seems like the latest tech invention. This is not surprising, given the founders' Silicon Valley product design education and training. JUUL co-founder Bowen drew on his experience as a design engineer at Apple to make JUUL's design mimic technology children were already familiar with, like Apple's iPhone.⁸¹ This made JUULs look "more like a cool gadget and less like a drug delivery device. This wasn't smoking or vaping, this was JUULing."⁸² The evocation of technology makes JUUL device familiar and desirable to the younger tech-savvy generation, particularly teenagers. According to a 19-year-old interviewed for the Vox series *By Design*, "our grandmas have iPhones now, normal kids have JUULs now. Because it looks so modern, we kind of trust modern stuff a little bit more so we're like, we can use it, we're not going to have any trouble with it because you can trust it."⁸³ A 16-year-old agreed, explaining that "the tech aspect definitely helps people get introduced to it and then once they're introduced to it, they're staying, because they are conditioned to like all these different products. And then this is

⁷⁹ *Juul e-Cigarettes Gain Popularity Among youth, But Awareness of Nicotine Presence Remains Low*, Truth Initiative (Apr. 18, 2018), <https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettes-Gain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf>.

⁸⁰ Jackler et al., *supra* note 40 at 25.

⁸¹ *How JUUL made nicotine go viral*, Vox – *By Design* (Aug. 10, 2018), <https://www.youtube.com/watch?v=AFOpoKBUyok>.

⁸² *Id.*

⁸³ *Id.*

1 another product. And it's just another product. Until you're addicted to nicotine."⁸⁴

2 59. The JUUL device has features reminiscent of youth-oriented tech culture and
3 gaming, like "secret" features users can unlock, such as making the indicator light flash rainbow
4 colors in "party mode." JUUL has been so successful in emulating technology that the small,
5 rectangular devices are often mistaken for—or passed off as—flash drives. According to one
6 senior at Eastlake High School in Washington State, "that's what people tell the teachers a lot,
7 too, if you charge it in class, they'll just say it's my flash drive."⁸⁵

8 60. The ability to conceal a JUUL is also part of the appeal for adolescents. The
9 devices are small and slim, so they fit easily in a closed hand or a pocket. The ease and
10 simplicity of use—there is nothing to light or unwrap, not even an on-off switch—also make it
11 possible to covertly use a JUUL behind a turned back, which has become a trend in many
12 schools. Officer Jeff Borsheim of the Bellevue Police Department in Washington said JUUL use
13 is "incredibly prevalent in schools," including both Bellevue High School and in middle schools,
14 and that it is hard to catch them in the act because JUUL doesn't produce a big vapor cloud.
15 Borsheim told KOMO News that students will "just take a little hit or puff off them and then can
16 hold the vapor in their mouth for a little while . . . There's minimal vapor. They'll also just blow
17 into their sleeve or into their hoodie."⁸⁶ Finding new ways to hide the ever-concealable JUUL
18 has spawned products designed just for that purpose, such as apparel that allows the wearer to
19 use the device while it is concealed in the drawstring of a hoodie or the strap of a backpack.⁸⁷
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24 ⁸⁴ *Id.*

25 ⁸⁵ *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

26 ⁸⁶ *Id.*

⁸⁷ Evie Blad, '*Juuling* and Teenagers: 3 Things Principals and Teachers Need to Know', Educ. Wk. (July 18, 2018), <https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html>.

61. JUUL also created special flavors that make its addictive, high-tech device even more attractive to adolescents. Tobacco companies have known for decades that flavored products are key to nicotine adoption by youth. A 1972 Brown & Williamson memorandum: “Youth Cigarette – New Concepts,” specifically noted the “well known fact that teenagers like sweet products.”⁸⁸ A 1979 Lorillard memorandum concluded that younger customers would be “attracted to products with ‘less tobacco taste,’” and even proposed borrowing data from the “Life Savers” candy company to determine which flavors enjoyed the widest appeal among youth.⁸⁹ According to 2004 data, 17-year-old smokers were more than three times likely as those over 25 to smoke flavored cigarettes and viewed flavored cigarettes as safer.⁹⁰ For this reason, in 2009 the FDA banned flavored cigarettes pursuant to its new authority under the Family Smoking Prevention and Tobacco Control Act of 2009. In announcing the ban, FDA Commissioner Dr. Margaret Hamburg declared that “flavored cigarettes are a gateway for many children and young adults to become regulator smokers.”⁹¹ A 2017 study of the cigarette flavor ban found that the ban was effective in lowering both the number of smokers and the amount smoked by smokers, though it was associated with an increased use of menthol cigarettes (the only flavor still available).⁹²

⁸⁸ Marketing Innovations, Inc., *Brown & Williamson Tobacco Corp. Project Report: Youth Cigarette—New Concepts*, U.C.S.F. Truth Tobacco Industry Documents (Sept. 1972), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=hcpd0040>.

⁸⁹ *Flavored Tobacco FAQs*, Students Working Against Tobacco (citing Sedgfield Idea Sessions 790606-790607. June 8, 1979. Bates No. 81513681/3691), <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (as of Oct. 16, 2019).

⁹⁰ Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. Times (Sept. 22, 2009), <https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.

⁹¹ *Id.*

⁹² Charles J. Courtemanche et al., *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, Am. J. of Preventive Med. 52(5):e139 - e146 (2017), <https://tobacco.ucsf.edu/more-evidence-support-eliminating-flavors-reduce-youth-cigarette-and-e-cigarette-use>; MB Harrell et al., *Flavored e-cigarette use: Characterizing youth,*

62. The use of flavors is just as problematic with e-cigarettes. According to the Surgeon General, 85% of adolescents who use e-cigarettes use flavored varieties.⁹³ Studies also show that flavors motivate e-cigarette initiation among youth,⁹⁴ and that youth are much more likely to use flavored tobacco products than adults are.⁹⁵ As Scott Neal, the tobacco prevention program manager for Public Health Seattle & King County, put it: “I don’t think it’s rocket science: We know flavors attract kids.”⁹⁶ In September 2019, the State of Michigan banned flavored e-cigarettes, a step the governor said was needed to protect young people from the potentially harmful effects of vaping, Governor Andrew Cuomo of New York announced that he would pursue emergency regulations to ban the sale of flavored e-cigarettes, and Washington Governor Jay Inslee ordered the Washington State Department of Health to ban all flavored vapor products.^{97, 98}

63. Despite JUUL’s claims that its target market is adult smokers, JUUL sold its product in flavors like Cool Mint, Crème Brulee, Fruit Medley, Cucumber, and Mango. These flavors undoubtedly made it easier for countless adolescents to start using JUUL products.

young adult, and adult users, Prev. Med Rep. 2017; 5: 33–40 (Nov. 11, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5121224/>.

⁹³ *E-Cigarette Use Among Youth and Young Adults*, U.S. Dept. of Health & Human Servs. (2016), <https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-Young-Adults.pdf> (last visited Nov. 8, 2019).

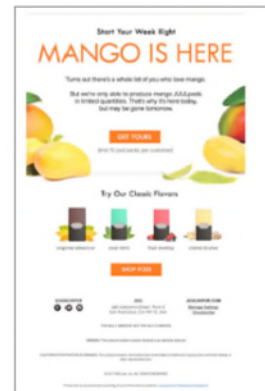
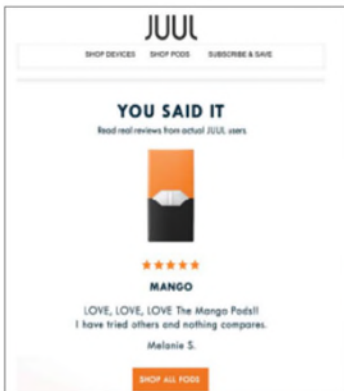
⁹⁴ Karl Paul, *Flavored Vapes Lure Teens Into Smoking and Nicotine Addiction, Study Shows*, MarketWatch (Feb. 26, 2019), <https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-study-shows-2019-02-25>.

⁹⁵ A.C. Villanti et al., *Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study*, 53 Am. J. of Preventative Med. 139 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28318902>.

⁹⁶ Amy Radil, *Seattle experts say restrictions on vaping must go further*, KUOW (Nov. 21, 2018), <https://kuow.org/stories/as-students-embrace-juuling-seattle-experts-say-restrictions-must-go-farther>.

⁹⁷ Jesse McKinley & Christina Goldbaum, *New York Moves to Ban Flavored E-Cigarettes by Emergency Order*, N.Y. Times (Sept. 15, 2019), <https://www.nytimes.com/2019/09/15/nyregion/vaping-ban-ny.html?smid=nytcore-ios-share>.

⁹⁸ Jay Inslee, *Executive Order 19-03: Addressing the Vaping Use Public Health Crisis*, State of Wash. Office of the Governor (Sept. 27, 2019), https://www.governor.wa.gov/sites/default/files/19-03%20-%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery.



JUUL @JUULvapor · 28 Aug 2017
Do you brûlée? RT if you enjoy dessert without the spoon with our Creme Brulee #JUULpods bit.ly/2wvDk38



99

64. The flavors pose dangers beyond luring young people into trying nicotine. Studies now show these sweet and fruity flavors present distinct additional health hazards. Researchers have found that some of the chemicals JUUL uses for flavor and perfume—particularly in the

⁹⁹ Chaykowski, *supra* note 65.

Crème Brulee flavor—contain relatively high levels of acetals.¹⁰⁰ Acetals are airway-irritating chemicals that may cause lung damage.¹⁰¹ Dr. Robert Jackler said that test results have shown that JUUL’s sweet and fruity flavors “contribute[] to the increasing body of evidence documenting toxicological effects of e-cig vapor.”¹⁰²

65. JUUL was well aware from the beginning that its products would appeal to youth. A former JUUL manager, who spoke to *The New York Times* on the condition that his name not be used because he worried about facing the ire of the company, said that within months of JUUL’s 2015 introduction, it became evident that teenagers were either buying JUULs online or finding others who made the purchases for them. Some people bought more JUUL kits on the company’s website than they could individually use—sometimes 10 or more devices at a time. “First, they just knew it was being bought for resale,” said the former senior manager, who was briefed on the company’s business strategy. “Then, when they saw the social media, in fall and winter of 2015, they suspected it was teens.”¹⁰³

66. This “suspicion” has been confirmed by the U.S. Surgeon General, who found that JUUL’s Twitter account was being followed by adolescents and that 25% of those re-tweeting official JUUL tweets were under 18 years old.¹⁰⁴ It is clear that JUUL, like Philip Morris and RJR before it, targeted youth as a key business demographic. Unsurprisingly, JUUL’s efforts to follow these pages of Big Tobacco’s playbook has yielded results: a recent study found

¹⁰⁰ Susie Neilson, *Irritating Compounds Can Show Up in ‘Vape Juice’*, NPR (July 30, 2019), <https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vape-juice>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?*, N.Y. Times (Aug. 27, 2019), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

¹⁰⁴ Adams, *supra* note 2.

that 15 to 17-year-olds are *16 times* more likely to use JUUL than 25 to 34-year-olds.¹⁰⁵

D. Eonsmoke Capitalizes on JUUL's Success

67. Defendant Eonsmoke took notice of JUUL's successful marketing to youth and saw it as an opportunity to profit.

68. Eonsmoke designs, markets, and distributes electronic cigarettes & accessories. Eonsmoke makes its own electronic vaping device that resembles the JUUL's device. Eonsmoke also makes both closed systems pods, like those sold by JUUL, and open system pods that can be filed by the user. Both Eonsmoke's device and its pods are advertised as JUUL-compatible, meaning that users can use Eonsmoke's device to vape JUULpods and they can also use JUUL's device to vape Eonsmoke's pods:¹⁰⁶

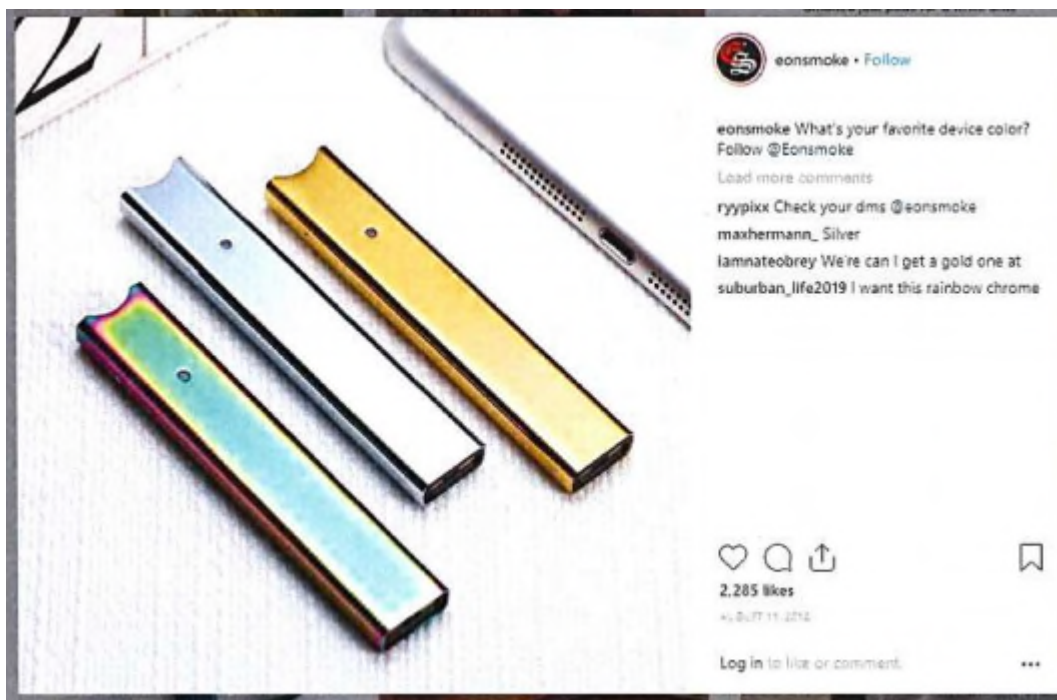


69. Below is an image of the Eonsmoke device:¹⁰⁷

¹⁰⁵ D.M. Vallone et al., *Prevalence and correlates of Juul use among a national sample of youth and young adults*, Tobacco Control (Oct. 29, 2018), <http://dx.doi.org/10.1136/tobaccocontrol-2018-054693>.

¹⁰⁶ Eonsmoke Vapes, Tumblr (June 4, 2018), <https://eonsmoke.tumblr.com/post/174567212961/mango-pods-6-tastes-like-a-sweet-and-crisp> (showing Eonsmoke mango pods compatible with Juul Device, captioned by Eonsmoke as “Mango Pods 6%. Tastes like a sweet and crisp Mango! Follow @Eonsmoke”); Eonsmoke Vapes, Tumblr (June 18th, 2018), <https://eonsmoke.tumblr.com/post/175012943246/blueberry-6-restocked-on-the-sites-grab-yours> (showing Eonsmoke blueberry pods compatible with Juul Device; captioned by Eonsmoke as “Blueberry 6% restocked on the sites! Grab yours today while supplies last! Follow @Eonsmoke”).

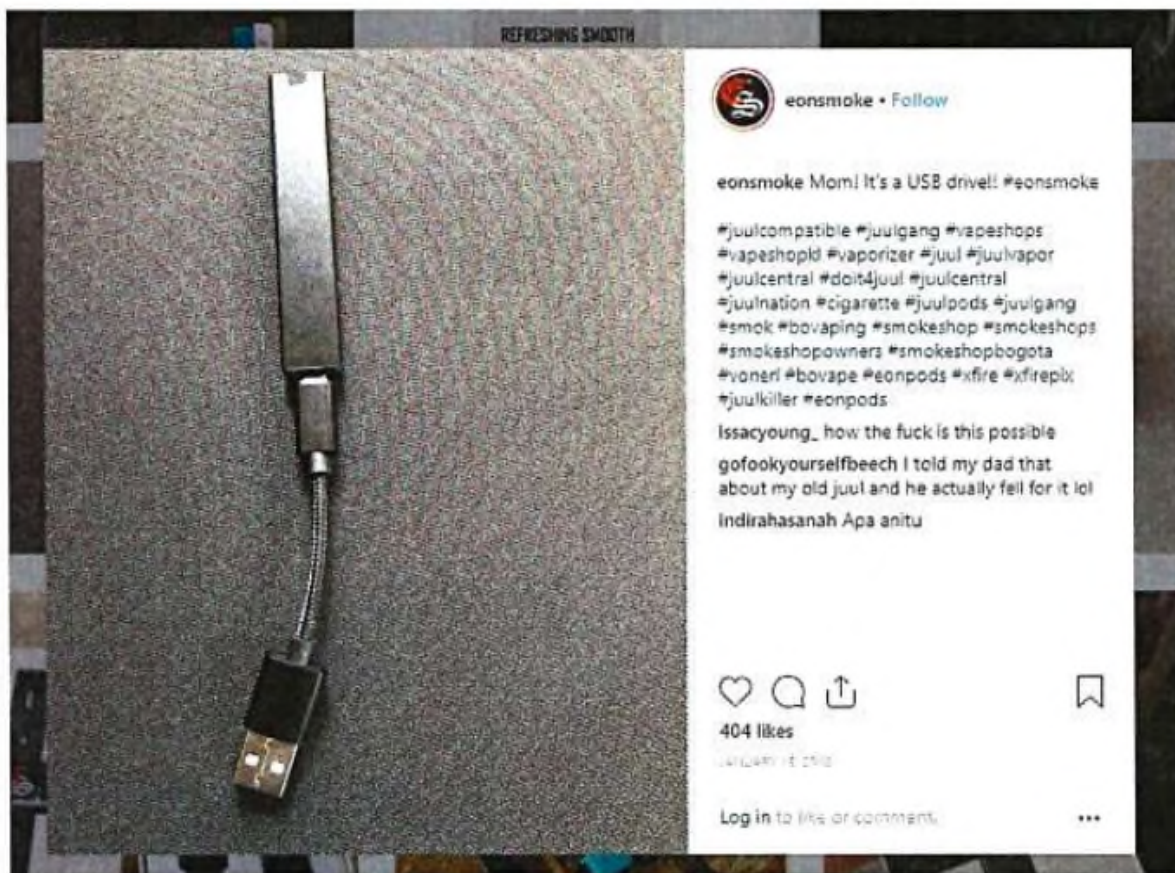
¹⁰⁷ Post by Instagram user “eonsmoke” on August 11, 2018.



70. Like JUUL's device, Eonsmoke's devices resemble flash drives. Eonsmoke explicitly capitalized on this fact by advertising that users of its products could lie to their parents and pretend the product was a flash drive. In a post on Eonsmoke's Instagram page, the company posted a photograph of its device with the caption "Mom! It's a USB drive!! #eonsmoke."¹⁰⁸ On this post, one user comments "I told my dad that about my old juul and he actually fell for it lol."¹⁰⁹

¹⁰⁸ Post by Instagram user "eonsmoke" on January 15, 2018.

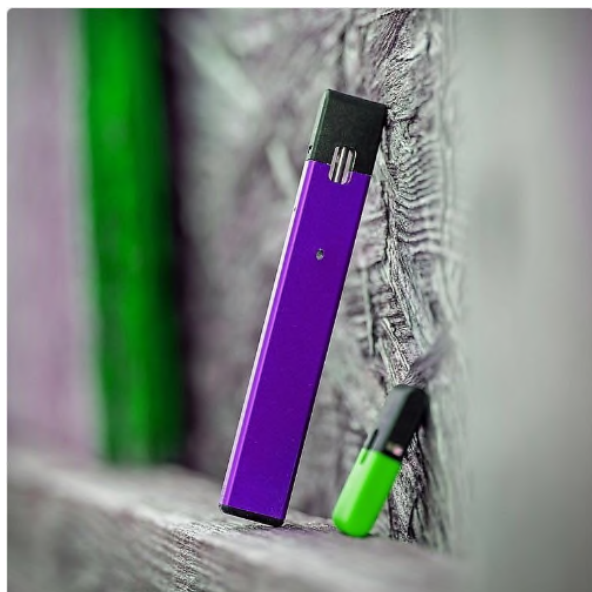
¹⁰⁹ *Id.*



71. Although the official “eonsmoke” Instagram account is now deleted, on Tumblr, another social media platform, an account called “Eonsmoke Vapes” contains links and images of Instagram posts that appear to have been originally posted by Eonsmoke. Each linked Instagram post is now-deleted. This Tumblr user holds itself out as Eonsmoke’s official page.¹¹⁰ These posts show that Eonsmoke frequently played up the idea that its product looked like a flash drive:¹¹¹

¹¹⁰ The “Eonsmoke Vapes” Tumblr page uses Eonsmoke’s logo and the page’s bio says “Buy Eonsmoke e juices at an incredibly [sic] price. Also check out our Juul compatible e-cig pods in six flavors available now! Visit <https://www.eonsmoke.com/>”, <https://eonsmoke.tumblr.com/>.

¹¹¹ Eonsmoke Vapes, Tumblr (June 26, 2018), <https://eonsmoke.tumblr.com/post/175286181941/2018-we-smoking-purple-flash-drives-eonsmoke> (showing purple vape; captioned by Eonsmoke as “‘2018 we smoking purple flash drives’ - @eonsmoke”); Eonsmoke Vapes, Tumblr (Apr. 16, 2018), <https://eonsmoke.tumblr.com/post/172997769276/red-devices-now-restocked-and-available-on> (showing red vape).



"2018 we smoking purple flash drives" - @eonsmoke



Red devices now restocked and available on Eonsmoke.com! Vape Eon! @eonsmoke

72. Eonsmoke has tapped into the youth social media network JUUL created by marketed to users of JUUL. Eonsmoke advertised its product as JUUL-compatible and used hashtags to connect itself to JUUL, including “#juulcompatible,” “#juulgang,” “#juul,” “#doit4juul,” and “#juulnation,” among others.¹¹² Similarly, in a post on the “Eonsmoke Vapes” Tumblr, Eonsmoke’s device and blueberry pods are marketed as “sexy” and tagged with “#juul,” “#juulgang,” “#juulnation,” and “#doit4juul,” among other tags. Eonsmoke also told users to “[f]ollow” them for sales and giveaways as in the post below from 2018, even though the FDA

next to soda can with text “Smoke flashdrives all 2018”); captioned by Eonsmoke as “Red devices now restocked and available on Eonsmoke.com! Vape Eon! @eonsmoke”.

¹¹² Eonsmoke has been so aggressive in copying JUUL and targeting JUUL users that JUUL sued Eonsmoke for patent infringement. *See* Verified Complaint (“Eonsmoke N.J. Compl.”), *JUUL Labs, Inc. v. Eonsmoke et al.*, No. 19-08405 (D.N.J. Mar. 12, 2019).

made it clear in October 2017 that e-cigarette products are included in its ban on free samples of tobacco products:¹¹³



So sexy! What do you guys think?

Follow @eonsmoke for sales and giveaways!

#juul #juulgang #juulnation #juulcentral #doit4juul #doit4state
#kangertech #kanger #aspirebreeze #aspirebreezekit #xfire
#xfirevape #bovaping #bovape #bovapingus #smokeshop
#vapeshop #vapor #vaporshop #smoktech #sourin #sourinair
#sourindrop #bouldervape #mrsalte

¹¹³ Eonsmoke Vapes, Tumblr (Feb. 13, 2018), <https://eonsmoke.tumblr.com/post/170841792591/so-sexy-what-do-you-guys-think-follow> (showing red vape and Eonsmoke blueberry pods, captioned by Eonsmoke “So sexy! What do you guys think? Follow @eonsmoke for sales and giveaways! #juul #juulgang #juulnation #juulcentral #doit4juul #doit4state #kangertech #kanger #aspirebreeze #aspirebreezekit #xfire #xfirevape #bovaping #bovape #bovapingus #smokeshop #vapeshop #vapor #vaporshop #smoktech #sourin #sourinair #sourindrop #bouldervape #mrsalte”); *see also* Eonsmoke Vapes, Tumblr (Feb. 10, 2018), <https://eonsmoke.tumblr.com/post/170724357236/we-are-doing-a-quick-weekend-juice-giveaway-of-our> (showing different flavor vape juice with text “Eonsmoke 60mg Juice Giveaway Tag a Friend Now!!!”, captioned by Eonsmoke “We are doing a quick weekend Juice giveaway of our made in USA 60mg salt nicotine vape juice!!! Giveaway ends Sunday 11:59 EST February 11th. The rules: 1. Follow @Eonsmoke 2. Tag a friend who vapes! More friends you tag the better your chances of winning!!! We will give away 4 bottles of 30ml juice!!!!!!!!!!!!!!!”); *see also* Eonsmoke Vapes, Tumblr (Feb. 10, 2018), <https://eonsmoke.tumblr.com/post/170725145496/you-probably-know-the-rules-by-now-we-are> (showing three vape devices with text “Gonna giveaway some devices too!!!!!!!!!! Follow @eonsmoke and tag a friend! Free devices giveaway!!!”, captioned by Eonsmoke “You probably know the rules by now.... we are feeling pretty generous! Hope you guys win something!!!! #eonsmoke #vapegiveaway #vapegiveaways #pods #podsgiveaways #vapegiveaways #vapegiveaway #podsgiveaways #eonsmoke #pods”).

73. Eonsmoke's "Doit4juul" account on Instagram was the most-followed JUUL account on Instagram, with over 81,000 followers as of February 2018.¹¹⁴ On YouTube, one of the "Doit4juul" videos had nearly 192,000 views as of March 2018.¹¹⁵ The "Doit4juul" campaign called on followers to share pictures or videos of themselves using JUUL.

74. In addition to driving social media posts about JUUL and vaping, Eonsmoke targeted the youth market by selling its pods in fruity flavors and its nicotine salts in flavors such as "Sour Gummy Worms," "Gummy Bear," "Donut Cream," "Pineapple Crush," "Cotton Candy" and more:¹¹⁶



Salt Nicotine Sour Gummy Worms 60mg Or 30mg E Juice E Liquid 30ML



Gummy Bear 30ML 60mg Or 30mg Salt Nicotine E Juice E Liquid

¹¹⁴ Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market*, 28 Tobacco Control 146, 146 (2019), <https://tobaccocontrol.bmj.com/content/28/2/146>.

¹¹⁵ *Id.*

¹¹⁶ Eonsmoke Vapes, Tumblr (June 12, 2018), <https://eonsmoke.tumblr.com/post/174824533561/sour-gummies-60mg-restocked-today-online-and> (showing Sour Gummy Worm salt nicotine vape juice, captioned by Eonsmoke "Sour Gummies 60mg restocked today online and through our vendors! Follow @Eonsmoke for more stock, vape developments, and new flavors"); *see also* Eonsmoke Vapes, Tumblr (July 1, 2018), <https://eonsmoke.tumblr.com/post/175446333176/cop-one-of-our-world-class-salt-nicotine-juices-in> (showing Gummy Bear salt nicotine vape juice, captioned by Eonsmoke "Cop one of our world class salt nicotine juices in 60mg. #eonsmoke @eonsmoke"); *see also* Eonsmoke Vapes, Tumblr (June 27, 2018), <https://eonsmoke.tumblr.com/post/175313662276/our-salt-nic-family-of-products-try-one-today-to> (showing salt nicotine vape juices, captioned by Eonsmoke "Our Salt Nic family of products! Try one today to see what all the hype is about. Follow @Eonsmoke").

75. When JUUL was pressured to stop selling certain flavors in stores, Eonsmoke was more than happy to fill the role. In 2018, Eonsmoke generated an estimated \$5.3 million in revenue.¹¹⁷ In 2019, after JUUL stopped selling flavors like Mango in stores, Eonsmoke's business soared, with an estimated \$43.6 million in tracked sales as of mid-July 2019.¹¹⁸

76. Eonsmoke followed in JUUL's footsteps by advertising these flavors to youth using the apps and websites where minors often spend time, including Instagram, Tumblr, Snapchat, YouTube, and Reddit.¹¹⁹

77. For example, on the social media platform Reddit, user "Eonjuulcompatiblepod" holds itself out as "Eonsmoke.com Juul Compatible Pods Official Representative" and claims that "Eonsmoke.com is the 2nd largest pod company in the USA and the top 5 in Salt Nicotine Bottled eLiquid. Our pods are Juul compatible so you don't have to buy another device. 7 flavors including blueberry, watermelon and strawberry."¹²⁰ Eonsmoke used Reddit to try to recruit JUUL users. For example, Eonsmoke commented that its products are not only compatible with JUUL but also cheap, a crucial factor for youth who often do not have much money: "Our pods are compatible with the juul device and our devices are compatible with juul pods and we just lowered the retail to 20\$ online after coupon."¹²¹ In addition, when Reddit users were discussing what flavors they would like to see JUUL produce and one user stated that he or she would like a

¹¹⁷ Shela Kaplan, *'Juul-alikes' Are Filing Shelves with Sweet, Teen-Friendly Nicotine Flavors*, N.Y. Times (Aug. 13, 2019), <https://www.nytimes.com/2019/08/13/health/juul-flavors-nicotine.html>.

¹¹⁸ *Id.*

¹¹⁹ Eonsmoke Vapes, Instagram (Feb. 3, 2018), (captioned by Eonsmoke "The official vaping brand of Snapchat :) #snapchat #eonsmoke #eonpods #juul #juulgang #phix #phixvapor").

¹²⁰ Eonsmoke (@Eonjuulcompatiblepod), Reddit, <https://www.reddit.com/user/Eonjuulcompatiblepod> (last visited Nov. 8, 2019).

¹²¹ Eonsmoke (@Eonjuulcompatiblepod), Comment to @u/981ti, Reddit (May 21, 2018, 8:43 PM), https://www.reddit.com/r/juul/comments/8k5wfa/are_there_any_other_devices_that_fit_juul_pods/dzeu9sj/?context=3.

The image is a collage of two Instagram posts. The top post is from the user 'eonsmoke' and features a red box with a large white 'E' and a yellow bee character. A smartphone is in the foreground. The bottom post is also from 'eonsmoke' and shows a cartoon illustration of a person lying on a couch, looking out a window at a house with a car in the driveway.

¹²³ Eonsmoke (@eonsmoke), Instagram (May 1, 2018) (showing an Eonsmoke device next to a bag of M&M candies and captioned by Eonsmoke “Can you name a better combo?”); *see also* Eonsmoke (@eonsmoke), Instagram (Feb. 25, 2018) (showing a meme featuring a character from the animated show “The Simpsons”).

79. Eonsmoke's social media also explicitly encouraged users to associate their products with movies and toys popular with children, such as Toy Story, and with schools.¹²⁴



Wow I love this! Follow @Eonsmoke for sales and giveaways



The Cotton Candy 60mg! #eonsmoke



Some Day Time Vibes @krissixx710

¹²⁴ Eonsmoke Vapes, Tumblr (Mar. 19, 2018), <https://eonsmoke.tumblr.com/post/172051155991/wow-i-love-this-follow-eonsmoke-for-sales-and-giveaways> (showing Eonsmoke device with Woody from the animated film "Toy Story" and blueberry vape pods, captioned by Eonsmoke as "Wow I love this! Follow @Eonsmoke for sales and giveaways"); *see also* Eonsmoke Vapes, Tumblr (Feb. 16, 2018), <https://eonsmoke.tumblr.com/post/170965631311/the-cotton-candy-60mg-eonsmoke> (showing Eonsmoke devices and nicotine salt vape juice on a desk, captioned by Eonsmoke as "The Cotton Candy 60mg! #eonsmoke"); *see also* Eonsmoke Vapes, Tumblr (Feb. 4, 2018), <https://eonsmoke.tumblr.com/post/170502488296/some-day-time-vibes-krissixx710> (showing Eonsmoke devices and flavor pods on a leopard print backpack, captioned by Eonsmoke as "Some Day Time Vibes @krissixx710").

80. Eonsmoke also used social media and memes to highlight an “advantage” of their product over JUUL’s: Eonsmoke sells pods in a 6% nicotine variety, more potent than the 5% nicotine pods sold by JUUL.

81. For example, on one post, Eonsmoke advertised that its “Watermelon 6% Pods” were “Juul compatible with more juice and more nicotine inside every pod!”¹²⁵ Eonsmoke highlighted this difference in several of its social media posts:¹²⁶



Try some Watermelon 6% Pods! All Juul compatible with more juice and more nicotine inside every pod! Follow @Eonsmoke



Comment Eon below for a follow back! Follow @Eonsmoke

¹²⁵ Eonsmoke Vapes, Tumblr (June 26, 2018), <https://eonsmoke.tumblr.com/post/175281868841/try-some-watermelon-6-pods-all-juul-compatible> (showing watermelon vape pods and sunglasses, captioned by Eonsmoke as “Try some Watermelon 6% Pods! All Juul compatible with more juice and more nicotine inside every pod! Follow @Eonsmoke”).

¹²⁶ Eonsmoke Vapes, Tumblr (Apr. 18, 2018), <https://eonsmoke.tumblr.com/post/173080730801/comment-eon-below-for-a-follow-back-follow> (showing person getting hit in the face with a book with text “When people say 6% nic is the same as 5% nic”, captioned by Eonsmoke as “Comment Eon below for a follow back! Follow @Eonsmoke”); *see also* Eonsmoke Vapes, Tumblr (May 20, 2018), <https://eonsmoke.tumblr.com/post/174088090966/warning-pineapple-pods-contain-nicotine-and-so> (showing pineapple crush vape pods, captioned by Eonsmoke as “WARNING: PINEAPPLE PODS CONTAIN NICOTINE AND SO MUCH FLAVOR IT MAY CAUSE YOU TO DROP ALL OTHER TYPES OF BRANDS FOR PODS. NICOTINE IS AN ADDICTIVE CHEMICAL. Follow @Eonsmoke”).



82. But Eonsmoke sometimes minimized its references to nicotine while advertising on social media. For example, the FDA sent Eonsmoke a warning letter in October 2019 for, among other things, failing to include the required nicotine warning statement in its posts and posts it pays for by “influencers.”¹²⁷

83. Like JUUL, Eonsmoke used these “influencers” to advertise its products, including Mia Khalifa, an Instagram influencer with 17.9 million followers who frequently posts suggestive or provocative photos and has a large youth audience, Stevie Emerson, who got 6.8 million views of his YouTube video titled, “Dude, Where’s my JUUL?,” and Donny Karle. Karle is better known to youth by his handle “DonnySmokes.” As a 21-year-old, Karle was getting about 3 million views each month reviewing vaping products on YouTube, which began in 2017

¹²⁷ Eonsmoke, LLC Warning Letter, *supra* note 18.

1 when he posted a “unboxing” video of his newly purchased JUUL.¹²⁸ Karle’s videos were
2 plainly aimed at youth; one was titled, “How to HIDE & HIT Your JUUL at SCHOOL
3 WITHOUT Getting CAUGHT.”¹²⁹ Eonsmoke’s CEO Michael Tolmach told Vice the company
4 paid Karle \$1,000 for each review of its products.¹³⁰

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6 84. As mentioned above, Eonsmoke’s conduct did not go unnoticed. Eonsmoke has
7 been sued by the Massachusetts and North Carolina Attorneys General and has recently attracted
8 the attention of the FDA. In addition to Eonsmoke’s omission of nicotine content warnings, the
9 FDA’s October 2019 letter warned Eonsmoke about its affirmative statements minimizing the
10 risks of vaping—specifically that although Eonsmoke is not authorized to claim that its products
11 are safer than cigarettes, its website boasted that “Eonsmoke electronic cigarettes provide you
12 with a premium vaping experience without the thousands of harmful chemicals and additives
13 often found in tobacco cigarettes.”¹³¹
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25 ¹²⁸ Allie Conti, *This 21-Year-Old is Making Thousands a Month Vaping on YouTube*, VICE (Feb. 5, 2018),
https://www.vice.com/en_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-month-vaping-on-youtube.

26 ¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ FDA, *supra* note 18.

85. Despite increasing pressuring from state and federal agencies, Eonsmoke was sold, and still sells, side by side with JUUL and the best-selling cigarette brand in the United States, Marlboro, a product of Philip Morris and its parent company, Altria.¹³²



This is how the Top shelf of the cigarette shelf looks now! Switch from cigarettes to Eon 6% pods now! #eonsmoke #juul

E. Altria and E-Cigarettes

86. Before JUUL's runaway success and the proliferation of copycat "JUUL-compatible products" like Eonsmoke's, Altria was investing heavily in the e-cigarette market.

¹³²Eonsmoke Vapes, Tumblr (July 14, 2018), <https://eonsmoke.tumblr.com/post/175887887396/this-is-how-the-top-shelf-of-the-cigarette-shelf> (showing Juuls being sold alongside cigarettes, captioned by Eonsmoke as "This is how the Top shelf of the cigarette shelf looks now! Switch from cigarettes to Eon 6% pods now! #eonsmoke #juul."); see also Hannah Smothers, *JUUL's 'Banned' Flavors Are Still Absolutely Available in New York City*, VICE (Nov. 4, 2019), https://www.vice.com/en_us/article/xwepnj/juul-pod-banned-flavors-still-available-in-new-york-city (showing JUUL products side by side with Eonsmoke products in stores in New York City in mid-October 2019).

Altria entered the e-cigarette market a year before JUUL did. E-cigarettes have been sold in the United States since the early 2000s, but Big Tobacco did not make its first forays into that space until a decade later. Big Tobacco—including Altria—has been one of the biggest losers in the fight against smoking. Altria estimates that the cigarette industry declined by -4% in 2017 and by -4.5% in 2018. For 2019 through 2023, Altria estimated for the average annual U.S. cigarette industry volume decline would be -4% to -5%.¹³³ Altria later revised this estimate in the second quarter of 2019 from 4-5% to 4-6%, in light of efforts to increase the legal age for cigarette smoking to 21.¹³⁴

87. In the face of these numbers, Altria turned to e-cigarettes, along with other “non-combustible products,” to “enhance” its business platform.¹³⁵ Altria boasted to shareholders that it “aspire[d] to be the U.S. leader in authorized, non-combustible, reduced-risk products.”¹³⁶

88. Altria entered the e-cigarette market with a cigarette-lookalike, or “cigalike,” style of e-cigarette, sold under the brand MarkTen. Following a phased roll-out of MarkTen in Indiana and Arizona in late 2013, Altria launched the MarkTen nationwide in 2014 with an aggressive marketing campaign, eclipsing the advertising expenditures for Imperial Tobacco’s e-vapor product, blu.¹³⁷

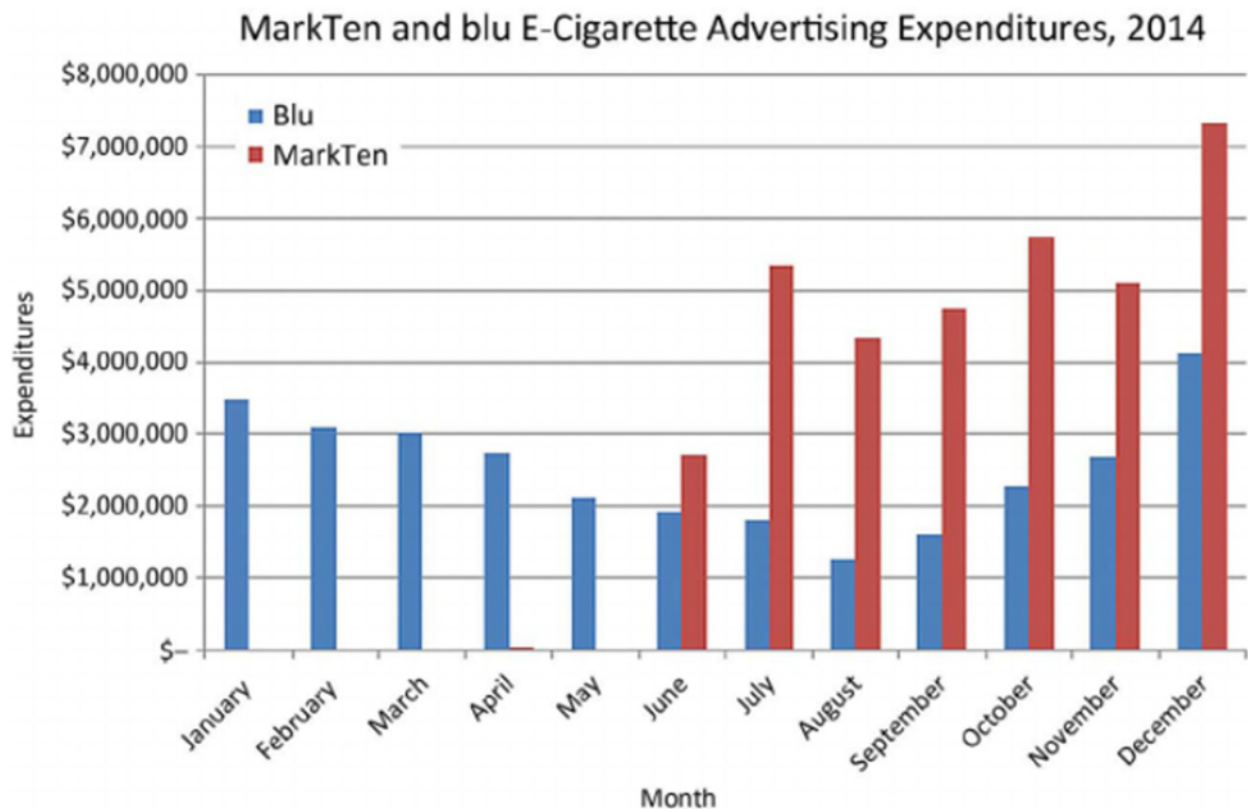
¹³³ *Altria’s Fourth-Quarter 2018 Earnings Conference Call*, Altria (Jan. 31, 2019), <http://investor.altria.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349>.

¹³⁴ *Altria Shares Slide As Cigarette Sales Continue to Decline*, Tobacco Bus. (July 31, 2019), <https://tobaccobusiness.com/altria-shares-slide-as-cigarette-sales-continue-to-decline/>.

¹³⁵ *Altria’s Second-Quarter 2019 Earning Conference Call*, Altria (July 30, 2019), <http://investor.altria.com/Cache/1001255076.PDF?O=PDF&T=&Y=&D=&FID=1001255076&iid=4087349>.

¹³⁶ *Annual Meeting of Shareholders*, Altria (May 17, 2018), <http://investor.altria.com/Cache/1500113050.PDF?O=PDF&T=&Y=&D=&FID=1500113050&iid=4087349>.

¹³⁷ Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as Altria’s MarkTen enters the marketplace*, Tobacco Control 25 (10) (2015), 1136/tobaccocontrol-2015-052532.



89. E-cigarette advertising spending for 2014 totaled \$88.1 million, a 52 percent increase from 2013.¹³⁸ Of the \$88.1 million spent in 2014, nearly 40% of that was Altria's MarkTen campaign, at \$35 million.¹³⁹ More than 18 million middle school and high school children were exposed to e-cigarette advertisements in 2014.¹⁴⁰ Approximately 1 in 2 middle school and high school age children saw advertisements for e-cigarettes in retail stores and almost 2 in 5 saw advertisements for e-cigarettes online.¹⁴¹

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Carley Thompson, *How JUUL cornered the youth tobacco market and what you should know*, King County Pub. Health Insider (Aug. 6, 2018), <https://web.archive.org/web/20190329100340/https://publichealthinsider.com/2018/08/06/how-juul-cornered-the-youth-tobacco-market-and-what-you-should-know/> (last visited Nov. 7, 2019).

¹⁴¹ *Id.*

90. Altria's MarkTen advertising tag line, "Let It Glow," was criticized by public health advocates for playing off Disney's popular children's movie "Frozen" and its hit song "Let It Go."¹⁴²



91. Even the then-president of R.J. Reynolds Vapor Company, Stephanie Cordisco, criticized Altria for irresponsible marketing, calling this tag line "terrible" and saying that the companies "running the most irresponsible campaigns are the ones who know better."¹⁴³ At the time, the president of the Campaign for Tobacco-Free Kids said that companies like Altria were

¹⁴² Matt Richtel, *A Bolder Effort by Big Tobacco on E-Cigarettes*, N.Y. Times (June 17, 2014), <https://www.nytimes.com/2014/06/17/business/a-bolder-effort-by-big-tobacco-on-e-cigarettes.html>.

¹⁴³ *Id.*

using “exactly the same themes we saw work with kids in the U.S. for decades with cigarettes.”¹⁴⁴



92. Although free samples of tobacco products are prohibited under the terms of the Tobacco Master Settlement Agreement, as well as FDA regulations issued in 2010, Altria took advantage of the grey area in the regulation of e-cigarettes and distributed coupons for free sample nicotine cartridges as part of its MarkTen launch. (The FDA has since issued finalized guidance clarifying the scope of the ban on distributing free samples or coupons to generally include e-cigarettes or components.¹⁴⁵)

93. Altria also took full advantage of its distribution network, reaching 60,000 stores in a month.¹⁴⁶ In Arizona, for example, Altria’s distribution network allowed MarkTen to achieve a 48% e-cigarette market share in just seven weeks after launch, according to then-CEO

¹⁴⁴ *Id.*

¹⁴⁵ *The Prohibition of Distributing Free Samples of Tobacco Products: Guidance for Industry*, U.S. Food & Drug Admin. (Oct. 2017), <https://www.fda.gov/media/119231/download>.

¹⁴⁶ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

1 Marty Barrington's statements on an earnings call.¹⁴⁷ Altria was clear in its intent to dominate
 2 the e-cigarette market as it has the traditional cigarette one: "We are the market leader today and
 3 we will continue to be," Barrington told investors.¹⁴⁸

4 94. Altria began acquiring small companies in the vaping industry, starting in 2014
 5 with Green Smoke, Inc., whose e-cigarettes were also the "cigalike" style, and were sold in
 6 flavors including "Vanilla Dreams" and "Smooth Chocolate."¹⁴⁹ In 2016, Altria acquired a vape
 7 product called Cync, from Vape Forward.¹⁵⁰ Cync is a small vapor device that uses prefilled
 8 pods, similar to JUUL. It also made a minority investment in Avail Vapor, one of the largest
 9 vape store chains in the U.S., which also produces and sells its own branded e-liquids for so-
 10 called open-system devices, which are refillable.¹⁵¹

11 95. In February 2018, with JUUL dominating the e-cigarette market, Altria
 12 announced the national launch of a pod-based, "closed-tank" e-cigarette like the JUUL, which it
 13 branded as the MarkTen Elite: "a pod-based product with a premium, sleek battery design" and
 14 having the "convenience of prefilled, magnetic click pods." Altria had initially brought the Elite
 15 to market in 2016, telling investors that the product "offers a variety of flavorful liquids in a
 16 modern, discrete device format."¹⁵² The product was sold in flavors such as Hazelnut Cream,
 17
 18
 19
 20

21 ¹⁴⁷ *Id.*

22 ¹⁴⁸ *Id.*

23 ¹⁴⁹ Mike Esterl, *Altria To Launch MarkTen E-Cigarette Nationally*, Wall St. J. (Feb. 19, 2014),
 24 <https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378>; Senator Richard J.
 Durbin et al., *Gateway to Addiction? A Survey of Popular Electronic Cigarette Manufacturers and Targeted*
Marketing to Youth (Apr. 14, 2014), [https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-
Cigarettes%20with%20Cover.pdf.](https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf)

25 ¹⁵⁰ Remarks by Jody Begley, 2017 Altria Investor Day (Nov. 2, 2017), [http://media.corporate-](http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf)
[ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf](http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf).

26 ¹⁵¹ Timothy S. Donahue, *At the Forefront*, Tobacco Rep. (Dec. 1, 2017),
<https://www.tobaccoreporter.com/2017/12/at-the-forefront/>.

¹⁵² Begley, *supra* note 150 at 18.

Apple Cider, and Strawberry Brulee.¹⁵³ At an analyst conference in February 2018, former Altria Chief Executive Officer, Marty Barrington, boasted that the Elite's pods held more than twice as much liquid as JUUL's.¹⁵⁴



96. Altria quickly followed with another pod-based product, the Apex by MarkTen.



97. Because e-cigarettes are subject to more relaxed regulation than cigarettes, Altria was able to market its products in ways it could not have done for traditional tobacco products. As mentioned above, Altria marketed its e-cigarettes in flavors that would appeal to youth: Strawberry Brulee, Apple Cider, Hazelnut Cream, Spiced Fruit, Piña Colada, Glacier Mint, and Mardi Gras (apparently a mixed berry flavor). Most of these flavors were marketed with the Elite and Apex products, Altria's "pod" e-cigarettes.

¹⁵³ Angel Abcede, *Altria Introducing Closed Vapor System*, CSP Daily News (Feb. 27, 2018), <https://www.cspdailynews.com/tobacco/altria-introducing-closed-vapor-system#page=0>.

¹⁵⁴ Altria Group, Inc., Current Report (Form 8-K), Ex. 99.2 (Feb. 21, 2018) (remarks by Barrington and other members of Altria's senior management team).

1 98. Altria’s push to gain the youth market gained the attention of the FDA. On
 2 September 12, 2018, the FDA sent a warning letter to Altria, requesting that Altria respond with
 3 a “detailed plan” to address and mitigate the widespread use of its e-cigarette products by
 4 minors.¹⁵⁵ Due to the “epidemic rate of increase in youth use” of e-cigarettes, the FDA had
 5 recently conducted an “enforcement blitz” of retailers nationwide and confirmed that Altria’s
 6 MarkTen products were being sold to minors. The FDA did not mince words, telling Altria that
 7 “[t]his is unacceptable, both legally and as a matter of public health.” The FDA warned Altria
 8 that it has a responsibility to ensure minors are not getting access to its products and that it was
 9 “crucial” that manufacturers like Altria take steps to prevent youth from using its products. First
 10 and foremost, the FDA asked Altria to “take prompt action to address the rate of youth use of
 11 MarkTen products.” The FDA suggested that Altria could revise its current marketing practices,
 12 eliminate online sales, and remove flavored products from the market. The FDA’s expectation
 13 and motivation was clear: “steps must be taken to protect the nation’s young people.”

16 99. On October 25, 2018, Altria responded to the FDA, claiming to have “serious
 17 concerns” about youth access to e-vapor products.¹⁵⁶ It admitted that the use of e-cigarettes by
 18 youth had risen to “epidemic levels.” In response, Altria agreed to remove its pod-based e-
 19 cigarettes from the market and stop selling any flavored traditional e-cigarettes other than
 20 tobacco, menthol, and mint. It acknowledged that “[b]ased on publicly-available information
 21 from FDA and others, we believe pod-based products significantly contribute to the rise in youth
 22 use of e-vapor products. We don’t believe our products are the issue, but we don’t want to risk

25 ¹⁵⁵ Letter from Scott Gottlieb, M.D., FDA Commissioner, to Howard A. Willard III, Altria Group, Inc. (Sept. 12,
 26 2018), <https://www.fda.gov/media/119666/download>.

26 ¹⁵⁶ Letter from Howard A. Willard III, Altria Group, Inc., to Scott Gottlieb, M.D., FDA Commissioner (Oct. 25,
 2018), <http://www.altria.com/About-Altria/Federal-Regulation-of-Tobacco/Regulatory-Filing/FDAFilings/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

1 contributing to the problem.” Altria’s letter went on to disclaim a number of practices that it
 2 associated with marketing to youth—strategies that were key components of JUUL’s marketing
 3 strategy. Altria specifically identified the use of flavors that go beyond traditional tobacco
 4 flavors, digitally advertising on websites with a large percentage of youth visitors, using social
 5 media to promote the brand, allowing online purchases and promotional sign-ups without age
 6 verification, advertising e-cigarettes on billboards, advertising with models who appear to be
 7 under 25 years old, distributing branded merchandise, and paying celebrities or other third
 8 parties to market or use a particular brand’s e-cigarette. Altria also claimed to support “banning
 9 vaping in schools” in order to reduce “social access.” Altria ended the letter by committing to
 10 “reverse the current use trend among youth.”
 11

12 100. Less than two months later, Altria changed its tune. On December 20, 2018,
 13 Altria announced that it would be making a \$12.8 billion investment in JUUL, the biggest equity
 14 investment in United States history.¹⁵⁷ The deal gave Altria a 35% stake in JUUL.
 15

16 **F. JUUL and Altria Join Forces to Protect JUUL’s Market Share**

17 101. By the fall of 2018, JUUL was under intense scrutiny. A group of eleven United
 18 States senators wrote JUUL’s CEO, Kevin Burns, a letter in April 2018, declaring that the JUUL
 19 device and JUULpods “are undermining our nation’s efforts to reduce tobacco use among youth
 20 and putting an entire new generation of children at risk of nicotine addiction and other health
 21 consequences.”¹⁵⁸ Less than a week later, then FDA Commissioner Gottlieb announced a
 22 crackdown on retailers to limit youth access to e-cigarettes and enforcement actions against
 23

24
 25 ¹⁵⁷ Cromwell Schubarth, *Vaping Unicorn Juul Opens Lab in Mountain View Amid Furor in S.F.*, Silicon Valley
 Bus. J. (Feb. 5, 2019), [https://www.bizjournals.com/sanjose/news/2019/02/05/juul-opens-lab-in-mountain-](https://www.bizjournals.com/sanjose/news/2019/02/05/juul-opens-lab-in-mountain-view.html)
 26 [view.html](https://www.bizjournals.com/sanjose/news/2019/02/05/juul-opens-lab-in-mountain-view.html).

¹⁵⁸ Richard Durbin et al., *Letter from 11 U.S. Senators, to Kevin Burns, CEO of JUUL Labs, Inc.*, U.S. Senate (Apr.
 18, 2018), <https://www.durbin.senate.gov/imo/media/doc/JUUL%20Letter%20-%20S%20IGNED.pdf>.

JUUL in particular.¹⁵⁹ At the same time, the FDA sent JUUL a request for documents relating to marketing, product design, and public health impact.¹⁶⁰ In July 2018, Massachusetts Attorney General Maura Healey announced an investigation into JUUL regarding marketing and sale to minors.¹⁶¹ In September 2018, FDA Commissioner Gottlieb called youth vaping an “epidemic” and sent letters to JUUL, Altria, and other e-cigarette manufacturers demanding a plan to reduce youth use.¹⁶² Then, in October 2018, as alleged above, the FDA raided JUUL’s headquarters and seized more than a thousand documents relating to JUUL’s sales and marketing practices.¹⁶³

102. On November 13, 2018, JUUL responded with an “Action Plan,” declaring its intent to stop selling certain flavors in brick-and-mortar stores, restrict purchases of those flavors on the JUUL website to adults age 21 and over, and shut down its social media accounts.¹⁶⁴

103. As the pressure on JUUL intensified, Altria stepped in to assist. Despite the clear criticism of JUUL’s conduct in its October 25th letter to the FDA, Altria announced its \$12.8 billion investment in JUUL on December 20, 2018.¹⁶⁵ Altria characterized its investment as one

¹⁵⁹ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-cigarettes*, U.S. Food & Drug Admin. (Apr. 23, 2018), https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua.

¹⁶⁰ *Id.*

¹⁶¹ *AG Healey Announces Investigation into JUUL, Other Online E-Cigarette Retailers Over Marketing and Sale to Minors*, Mass.gov (July 24, 2018), <https://www.mass.gov/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing>.

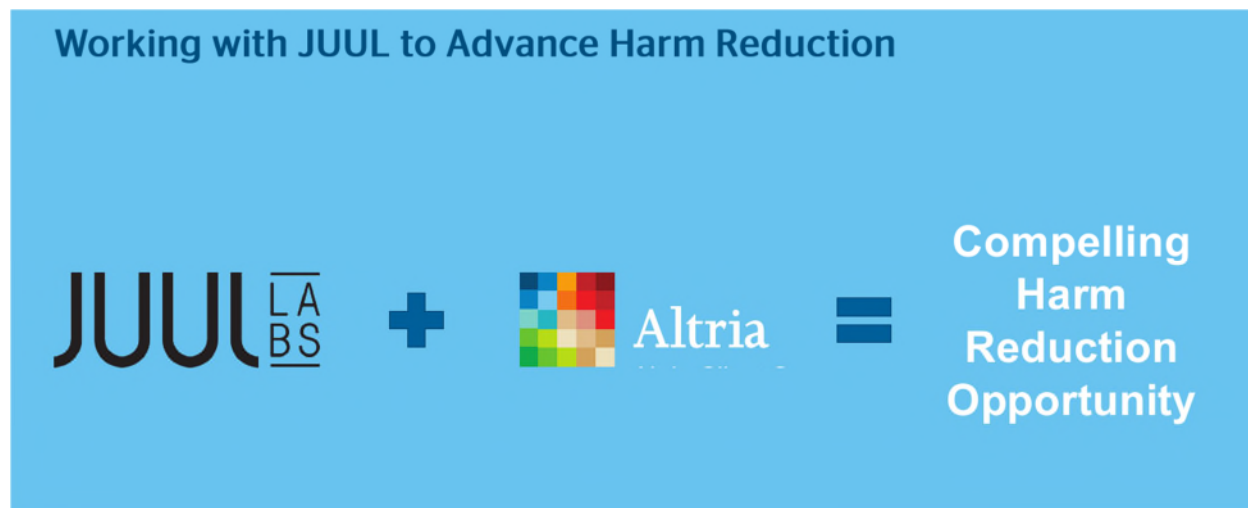
¹⁶² *Letters to Manufacturers Regarding Plans to Address Youth Access and Use*, U.S. Food & Drug Admin. (Sept. 12, 2018), <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youth-access>.

¹⁶³ McGinley, *supra* note 21.

¹⁶⁴ *Juul Labs Action Plan*, Juul Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

¹⁶⁵ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth* (“Altria Minority Investment”), BusinessWire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

intended to “accelerate harm reduction and drive growth.”¹⁶⁶ In an investor presentation in 2019, Altria described JUUL as having a “unique and compelling product” and included the following graphic:¹⁶⁷



104. But as the president of the Campaign for Tobacco-Free Kids observed upon announcement of the deal, “Altria has no interest in seriously reducing the number of people who smoke cigarettes.”¹⁶⁸

105. Altria would not have made such an investment if it did not intend to grow JUUL’s already enormous market even more. In fact, Altria said as much when announcing its investment, explaining that its investment in JUUL “enhances future growth prospects” and committing to applying “its logistics and distribution experience to help JUUL expand its reach and efficiency.”¹⁶⁹ Since the deal was inked in December 2018, Altria’s actions have clearly helped JUUL maintain, if not expand, its market share—a market share that, based on Altria’s

¹⁶⁶ *Id.*

¹⁶⁷ Howard Willard, *2019 CAGNY Investor Presentation*, Altria (2019), <http://investor.altria.com/Cache/1500117496.PDF?O=PDF&T=&Y=&D=&FID=1500117496&iid=4087349>.

¹⁶⁸ Sheila Kaplan & Matt Richtel, *Juul Closes Deal with Tobacco Giant Altria*, N.Y. Times (Dec. 20, 2018), <https://www.nytimes.com/2018/12/20/health/juul-reaches-deal-with-tobacco-giant-altria.html>.

¹⁶⁹ *Altria Minority Investment*, *supra* note 165.

own October 25, 2018 letter to the FDA, it believes was gained by employing marketing and advertising practices that contributed to youth vaping. Altria's Second Quarter 2019 Earnings Call reported that JUUL continued to grow in the first half of 2019, from a 33% category share in 2018 to 48% by the second quarter 2019. JUUL's expected revenue for 2019 is \$3.4 billion, nearly triple what it was in 2018.¹⁷⁰

106. From JUUL's beginnings, Altria had "followed Juul's journey rather closely."¹⁷¹ Altria Chairman and CEO Howard Willard said that, for years, his company "watched Juul carefully to see if it had staying power."¹⁷² Altria decided it did. As Willard explained: "During 2018, we concluded that JUUL had not only become the retail share leader in the U.S. e-vapor category, but that no other brand was close to it in share or future growth potential."¹⁷³ This was enough for Altria, one of the world's largest producers and marketers of tobacco products, to call JUUL's alleged smoking cessation device a "terrific product" and take a 35% stake in JUUL with its \$12.8 billion investment.¹⁷⁴ With this investment, Altria now owns both the number one youth initiation cigarette in the United States (the Marlboro cigarette) and the number one youth initiation e-cigarette in the United States, JUUL.

107. Notwithstanding Altria's statements to the FDA just two months previously about its concerns that JUUL was marketing and advertising its products in a way that contributed to the youth vaping epidemic, Willard stated that the deal would allow Altria to "work[] with JUUL

¹⁷⁰ Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite Flavored Vape Restrictions*, Bloomberg (Feb. 22, 2019), <https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban>.

¹⁷¹ Altria Group, Inc., Current Report (Form 8-K) at 4, Ex. 99.1 (Feb. 20, 2019), <https://www.sec.gov/Archives/edgar/data/764180/000076418019000018/exhibit991-2019cagnyremarks.htm>.

¹⁷² *Id.* at 4.

¹⁷³ *Id.* at 4.

¹⁷⁴ Angelica LaVito, *E-Cigarette Sales Are Booming Thanks to Juul*, CNBC (Aug. 21, 2018), <https://www.cnn.com/2018/08/21/e-cigarette-sales-are-booming-thanks-to-juul.html>.

1 to accelerate its mission.”¹⁷⁵ Altria committed to applying “its logistics and distribution
 2 experience to help JUUL expand its reach and efficiency” and offering JUUL the support of
 3 “Altria’s sales organization, which covers approximately 230,000 retail locations.” It also gave
 4 JUUL access to its “premier” retail shelf space while allowing it to continue to sell its flavored
 5 products online and provided JUUL with access to the databases of all of Altria’s companies.
 6 According to Willard, Altria was “excited to support JUUL’s highly-talented team and offer
 7 [Altria’s] best-in-class services to build on their tremendous success.” Altria admitted that
 8 minors were using JUUL products and that “underage use of e-cigarette product is a problem.”
 9 Nevertheless, that it believed its investment in JUUL “strengthens its financial profile and
 10 enhances future growth prospects.”
 11

12 108. Altria’s decision to prioritize profits over the dangers of youth vaping did not go
 13 unnoticed. On February 6, 2019, former FDA Commissioner Scott Gottlieb, sent Altria another
 14 letter “regarding representations” made by Altria acknowledging that it “has an obligation to take
 15 action to help address the mounting epidemic of youth addiction to tobacco products.”¹⁷⁶
 16 Commissioner Gottlieb told Altria that its recent purchase of a 35% ownership of JUUL
 17 “contradict[s] the commitments you made to the FDA.” The FDA demanded Altria be prepared
 18 to explain itself regarding its “plans to stop marketing e-cigarettes and to address the crisis of
 19 youth use of e-cigarettes.” Commissioner Gottlieb told Altria that “deeply concerning data”
 20 shows that “youth use of JUUL represents a significant proportion of overall use of e-cigarette
 21 products by children” and despite any steps the companies had taken to address the issue he
 22
 23
 24
 25

26 ¹⁷⁵ *Altria Minority Investment*, *supra* note 165.

¹⁷⁶ Letter from Scott Gottlieb, M.D., FDA Commissioner, to Howard Willard III, Altria Group, Inc. (Feb. 6, 2019), <https://www.fda.gov/media/122589/download>.

1 “ha[d] no reason to believe these youth patterns of use are abating in the near term, and they
2 certainly do not appear to be reversing.”

3 109. The companies met with Gottlieb in March 2019 in a meeting the Commissioner
4 described as “difficult.”¹⁷⁷ Gottlieb “did not come away with any evidence that public health
5 concerns drove Altria’s decision to invest in JUUL, and instead sa[id] it looks like a business
6 decision.” Just a few weeks later, Gottlieb resigned his position.

7
8 110. As mentioned above, Altria’s investment in JUUL is not only a financial
9 contribution. Altria is working to actively help run JUUL’s operations and expand JUUL’s sales.
10 Altria’s investment brings legal and regulatory benefits to JUUL, by helping with patent
11 infringement battles and consumer health claims and helping to navigate the regulatory waters
12 and FDA pressure. In fact, Joe Murillo, who headed regulatory affairs for Altria, is now JUUL’s
13 chief regulatory officer.¹⁷⁸ A 24-year career Altria executive, Murillo previously ran Altria’s e-
14 cigarette business, Nu Mark, “before Altria pulled its e-cigarettes off the market as part of its
15 deal with J[UUL].”¹⁷⁹

16
17 111. Altria also brings lobbying muscle. Altria “has a potent lobbying network in
18 Washington and around the country.”¹⁸⁰ While an Altria spokesman has denied that there was
19 any contractual services agreement for lobbying between JUUL and Altria, he admitted that he
20
21

22 ¹⁷⁷ Kate Rooney & Angelica LaVito, *Altria shares fall after FDA’s Gottlieb describes ‘difficult’ meeting on Juul*,
23 CNBC (Mar. 19, 2019), <https://www.cnbc.com/2019/03/19/altria-shares-fall-after-fdas-gottlieb-describes-difficult-meeting-on-juul.html>.

24 ¹⁷⁸ Jennifer Maloney, *Juul Hires Another Top Altria Executive*, Wall St. J. (Oct. 1, 2019),
25 <https://web.archive.org/web/20191009170129/https://www.wsj.com/articles/juul-hires-another-top-altria-executive-11569971306> (last visited Nov. 7, 2019).

26 ¹⁷⁹ *Id.*

¹⁸⁰ Shelia Kaplan, *In Washington, Juul Vows to Curb Youth Vaping. Its Lobbying in States Runs Counter to That Pledge.*, N.Y. Times (Apr. 28, 2019), <https://www.nytimes.com/2019/04/28/health/juul-lobbying-states-ecigarettes.html>.

1 did not know what informal advice and conversations Altria has had with JUUL about lobbying
 2 and efforts. Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids, which has
 3 been involved in many state lobbying battles, said, “It’s hard to say where Altria ends and Juul
 4 begins.”¹⁸¹ Since JUUL and Altria joined forces, JUUL’s spending on lobbying has risen
 5 significantly. JUUL spent \$1.95 million on lobbying in the first two quarters of 2019, compared
 6 to \$1.64 million in all of 2018.¹⁸²

8 112. In addition, Altria’s arrangement with JUUL gives JUUL greater access to retail.
 9 JUUL has been in 90,000 US retail outlets, while Altria reaches 230,000 US outlets. Altria also
 10 brings its logistic and distribution experience. And importantly, Altria gives JUUL access to
 11 shelf space—and not just shelf space, but space near Altria products and retail displays. The
 12 arrangement allows JUUL’s tobacco and menthol-based products to receive prominent
 13 placement alongside a top-rated brand of combustible cigarettes.

15 113. Altria is closely intertwined with JUUL. Not only does Altria’s investment also
 16 allow it to appoint a third of JUUL’s board, but last month, JUUL’s CEO resigned to be replaced
 17 by another career Altria executive, K.C. Crosthwaite. Crosthwaite had most recently served as
 18 the vice president and chief growth officer of Altria Client Services LLC, overseeing the
 19 company’s work, including digital marketing, packaging design & innovation, product
 20 development, and safety, health, and environmental affairs. Crosthwaite knows Big Tobacco’s
 21 playbook all too well, having previously serving as the president and CEO of Phillip Morris
 22 USA, the vice president and general manager at Marlboro, and the vice president of strategy and
 23 business development of at Altria Client Services LLC.

25 _____
 26 ¹⁸¹ *Id.*

¹⁸² Alex Gangitano, *Embattled Juul seeks allies in Washington*, The Hill (Aug. 7, 2019),
<https://thehill.com/business-a-lobbying/business-a-lobbying/456449-embattled-juul-seeks-allies-in-washington>.

114. This arrangement was profitable for both companies. JUUL employees received \$2 billion in bonuses, which, split among the Company's 1,500 employees, was approximately \$1.3 million per employee,¹⁸³ and Altria received millions of teen customers.

115. Altria and JUUL immediately got to work to protect JUUL's market share from increasing regulatory and social pressure. JUUL now claims its mission is to "improve the lives of the world's one billion adult smokers by eliminating cigarettes" and its advertising now encourages "making the switch."¹⁸⁴

116. In March 2019, JUUL's CEO Ken Burns wrote an op-ed piece declaring his agreement with HHS Secretary Azar and FDA Commissioner Gottlieb "that companies such as ours must step up with meaningful measures to limit access and appeal of vapor products to young people. And that's exactly what we've done, and we will do more to combat teen use in order to save the harm-reduction opportunity for the 34 million adult smokers in the United States."¹⁸⁵

117. In September 2019, JUUL spokesperson Ted Kwong said the company agreed with the need for "aggressive category-wide action on vapor products," adding that it had taken "the most aggressive actions of anyone in the industry to combat youth usage."¹⁸⁶

118. Similarly, Altria's CEO Howard Willard claimed that it invested in JUUL to help "switching adult smokers" and "reduce harm."¹⁸⁷ But JUUL does not have FDA approval as a

¹⁸³ Olivia Zaleski, *Juul Employees to Get \$2 Billion Bonus in Altria Deal*, Bloomberg (Dec. 20, 2018), <https://www.bloomberg.com/news/articles/2018-12-20/juul-employees-said-to-get-2-billion-bonus-in-altria-deal>.

¹⁸⁴ *Our Mission*, JUUL Labs, Inc. (2019), <https://www.juul.com/mission-values> (last visited Nov. 8, 2019).

¹⁸⁵ Kevin Burns, *Vape makers must do more to stop kids from using e-cigarettes*, Wash. Post (Mar. 30, 2019), <https://www.washingtonpost.com/opinions/2019/03/30/vape-makers-must-do-more-stop-kids-using-e-cigarettes/>.

¹⁸⁶ Steve Gorman, *California governor acts to stem 'epidemic' of youth vaping*, Reuters (Sept. 16, 2019), <https://www.reuters.com/article/us-health-vaping-california/california-governor-acts-to-stem-epidemic-of-youth-vaping-idUSKBN1W12DD>.

¹⁸⁷ See *Altria Minority Investment*, *supra* note 165.

1 cessation device. This may be because, as one Company engineer said: “We don’t think a lot
 2 about addiction here because we’re not trying to design a cessation product at all ... anything
 3 about health is not on our mind.”¹⁸⁸

4 119. JUUL also does not have authority to claim that its product is healthier than
 5 cigarettes. On September 9, 2019, the FDA warned JUUL that it has violated federal law by
 6 making unauthorized representations that JUUL products are safer than cigarettes.¹⁸⁹

7 120. Moreover, even if JUUL were to obtain FDA approval as a legitimate smoking
 8 cessation device, this has no impact on—and certainly does not excuse—the Defendants’
 9 conduct that targets youth. Regardless of the potential health benefits to chain smokers from
 10 switching to vaping from smoking, there is no benefit to kids from starting to vape.
 11

12 **G. The Cost of JUUL’s Success**

13 121. In addition to designing its devices to be particularly attractive to youth, JUUL
 14 designed its devices to be highly addictive. Unlike most other e-cigarettes, which use freebase
 15 nicotine, JUUL uses patented nicotine salts from which it makes liquid nicotine cartridges, or
 16 JUULpods.¹⁹⁰ Each JUULpod is, according to JUUL, the equivalent of a pack of cigarettes. Each
 17 pod contains an alarming amount of nicotine, with up to 59 mg per ml—an amount that is
 18 roughly three times the amount of nicotine that can be sold to consumers in the European Union
 19 in a JUULpod. On top of ramping up the amount of nicotine, JUULpods enabled JUUL to
 20 increase the rate and amount of nicotine delivery to the JUUL user, roughly doubling the
 21
 22

23
 24 ¹⁸⁸ Nitasha Tiku, *Startup Behind the Lambo of Vaporizers Just Launched an Intelligent e-Cigarette*, The Verge
 (Apr. 21, 2015), <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

25 ¹⁸⁹ *Juul Labs, Inc. Warning Letter*, U.S. Food & Drug Admin. (Sept. 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

26 ¹⁹⁰ Rachel Becker, *Juul’s Nicotine Salts Are Dominating the Market – And Other Companies Want In*, The Verge
 (Nov. 21, 2018), <https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten>.

1 concentration and tripling the delivery speed of nicotine of the average e-cigarette.¹⁹¹ Eonsmoke
 2 has followed this same playbook, advertising “[e]ach flavored cartridge is the equivalent of up to
 3 a pack of traditional cigarettes.”¹⁹² But Eonsmoke’s products claim to contain even more nicotine
 4 than JUULs. For example, EonSmoke sells its 4x Pods in “Blue Raspberry Flavor JUUL
 5 Compatible 6.8% Salt Nic Pods.”¹⁹³
 6

7 122. Big Tobacco spent decades manipulating nicotine in order to foster and maintain
 8 addiction in their customers. RJR developed and patented nicotine salt additives, including
 9 nicotine benzoate, to increase nicotine delivery in cigarette smoke. The objective was to provide
 10 an additional “nicotine kick” based on increased nicotine absorption associated with lower pH.
 11 JUUL uses this very same concept for its market-dominating e-cigarettes. JUUL’s patent for its
 12 nicotine salts describes a process for combining benzoic acids with nicotine, a formulation that
 13 mimics the nicotine salt additive developed by RJR. JUUL’s use of benzoic acid and
 14 manipulation of pH affect the palatability of nicotine inhalation by reducing the “throat hit” that
 15 users experience when vaping. Indeed, this was the objective behind using nicotine salts (as
 16 compared to “free base nicotine” which has a higher pH). According to Ari Atkins, one of the
 17 inventors of the JUUL device, “[i]n the tobacco plant, there are these organic acids that naturally
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23 ¹⁹¹ *How Much Nicotine is In Juul?*, Truth Initiative (Feb. 26, 2019), [https://truthinitiative.org/research-](https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul)
 24 [resources/emerging-tobacco-products/how-much-nicotine-juul](https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul).

25 ¹⁹² *Eonsmoke About Us*, eonsmoke.com,
 26 <https://web.archive.org/web/20191009033001/https://www.eonsmoke.com/about-us/> (last visited Nov. 7, 2019).

¹⁹³ *Eonsmoke Product*, eonsmoke.com,
[https://web.archive.org/web/20191009085755/https://www.eonsmoke.com/product/4x-blue-raspberry-flavor-juul-](https://web.archive.org/web/20191009085755/https://www.eonsmoke.com/product/4x-blue-raspberry-flavor-juul-compatible-6-8-salt-nic-pods/)
 compatible-6-8-salt-nic-pods/ (last visited Nov. 7, 2019) (“Flavor profile: Your favorite snack and ejuice flavor
 now in pod form. Both sweet and sour at the same time, makes sour gummy one of the fan favorites. Blue
 Raspberry 4x pods just hit that sweet spot of flavor.”).

1 occur. And they help stabilize the nicotine in such a way that makes it . . . I’ve got to choose my
 2 words carefully here: Appropriate for inhalation.”¹⁹⁴

3 123. Because smokers are already accustomed to a certain level of harshness and throat
 4 hit, developing a product with low levels of harshness and minimal “throat hit” is only a critical
 5 concern if your goal is to appeal to non-smokers, for example, youth. Minimizing the harshness
 6 of nicotine also allows one to vape more frequently and for longer periods of time and masks the
 7 amount of nicotine being delivered by eliminating the unpleasant throat hit normally associated
 8 with large doses of nicotine. The harshness of free base nicotine makes prolonged vaping
 9 difficult; the use of nicotine salts solves that problem. Put another way, the nicotine salt
 10 technology behind JUULpods makes JUUL “smoke” highly potent yet hardly perceptible.
 11

12 124. Eonsmoke has honed in on this distinction. For example, in a comment on social
 13 media platform Reddit, Eonsmoke advertised that compared to JUUL, “[o]ur throat hit is
 14 smoother, buzz is the same.” Eonsmoke also advertised their new “disposable pod system which
 15 is 1.3ml and 7% salt nic for 8\$ you get the battery plus one large pod that lasts like 2 juul
 16 pods.”¹⁹⁵
 17

18 125. The increased nicotine exposure facilitated by the JUUL device and its tag-along,
 19 Eonsmoke, has serious health consequences. The ease of use and “smoothness” strip away
 20 external inhibitors and enable extreme levels of unfettered use. Using the JUUL’s own
 21 calculations, consuming two JUULpods in a day is the equivalent of consuming two to four
 22 packs of cigarettes a day. In this way, JUUL has not only created a new generation of e-cigarette
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25 ¹⁹⁴ David Pierce, *This Might Just Be the First Great E-Cig*, Wired.com (Apr. 21, 2015),
 26 <https://www.wired.com/2015/04/pax-juul-ecig/>.

¹⁹⁵ Eonsmoke (@Eonjuulcompatiblepod), Comment to post by @u/richard_bag_DIK, Reddit (Oct. 23, 2018 3:40 PM), https://www.reddit.com/r/juul/comments/9qrxxr/3rd_party_pods/e8bqkbb/?context=3.

1 smokers, but has also pioneered a new style of smoking—vaping—that is more nicotine-
 2 saturated than ever before.

3 126. Increased rates and duration of smoking lead to greater overall exposure to
 4 nicotine. Nicotine is a neurotoxin. A highly addictive, psychoactive substance that targets brain
 5 areas involved in emotional and cognitive processing, nicotine poses a particularly potent threat
 6 to the adolescent brain, as it can “derange the normal course of brain maturation and have lasting
 7 consequences for cognitive ability, mental health, and even personality.”¹⁹⁶ Animal researchers
 8 from the Yale University School of Medicine has found that vaping during adolescence can lead
 9 to long-term brain changes, like attention deficit hyperactivity disorder.¹⁹⁷

11 127. Studies also show that exposure to nicotine as a teen—even minimal exposure—
 12 biologically primes the brain for addiction and greatly increases likelihood of dependence on
 13 nicotine as well as other substances later in life.¹⁹⁸ In a study done on mice, even “very brief,
 14 low-dose exposure to nicotine in early adolescence increases the rewarding properties of other
 15 drugs, including alcohol, cocaine, methamphetamine—and these are long-term changes.”¹⁹⁹

17 128. JUUL and Eonsmoke’s use of flavors only amplifies their addictive qualities.
 18 Research done by Nii Addy, associate professor of psychiatry and cellular and molecular
 19 physiology at the Yale School of Medicine, found that “sweet flavors can make the nicotine
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 22

23 ¹⁹⁶ N.A. Goriounova & H.D. Mansvelder, *Short- and Long-Term Consequences of Nicotine Exposure during*
Adolescence for Prefrontal Cortex Neuronal Network Function, Cold Spring Harbor Persp. in Med. 2(12) (Dec.
 24 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

25 ¹⁹⁷ Jon Hamilton, *How Vaping Nicotine Can Affect A Teenage Brain*, NPR (Oct. 10, 2019),
<https://www.npr.org/sections/health-shots/2019/10/10/768588170/how-vaping-nicotine-can-affect-a-teenage-brain>.

26 ¹⁹⁸ *Principles of Adolescent Substance Use Disorder: A Research Based Guide*, Nat’l Inst. on Drug Abuse (2014),
[https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatment-research-](https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatment-research-based-guide/introduction)
[based-guide/introduction](https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatment-research-based-guide/introduction).

¹⁹⁹ Hamilton, *supra* note 197.

1 more palatable . . . but also act in the brain to increase nicotine taking.”²⁰⁰ This effect is
 2 especially troubling for teenage brains, which are more sensitive than adult brains to rewards.
 3 According to University of Pennsylvania psychologist Janet Audrain-McGovern, research shows
 4 that “if the first e-cigarette you used was flavored, then you’re more likely to go on and use an e-
 5 cigarette again.”²⁰¹

6
 7 129. According to congressional testimony from Dr. Jonathan Winickoff, a professor
 8 of pediatrics at Harvard Medical School and the Director of Pediatric Research in the Tobacco
 9 Research and Treatment Center, “[n]icotine addiction can take hold in only a few days,
 10 especially in the developing adolescent brain that is particularly vulnerable to addiction to
 11 nicotine. . . Many of my patients find Juul nearly impossible to stop. Nicotine withdrawal can
 12 cause headaches, insomnia, irritability, anxiety, and depression, and these withdrawal symptoms
 13 are one of the primary reasons a nicotine addiction is difficult to overcome.”²⁰² Moreover, there
 14 is a lack of effective tools to help adolescents overcome nicotine addiction: there is no good data
 15 on how to treat adolescents with e-cigarette dependence; there has not been enough research on
 16 youth tobacco cessation strategies; and most of the pharmacological therapies approved for
 17 adults have been shown to be ineffective or only marginally effective in adolescents.²⁰³

18
 19 130. Research in Massachusetts indicates that daily JUUL and other e-cigarette use is
 20 much more likely to continue than daily cigarette smoking. Out of the surveyed students who
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23 ²⁰⁰ *Id.*

24 ²⁰¹ *Id.*

25 ²⁰² Jonathan Winickoff, *Testimony of Jonathan Winickoff before the U.S. House of Representatives Committee on*
Oversight and Reform Subcommittee on Economic and Consumer Policy (“Winickoff Testimony”) at 2, U.S.
 House Committee on Oversight & Reform (July 24, 2019),
 26 [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf)
[Winickoff%20AAP%20Testimony.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf).

²⁰³ *Id.* at 2.

1 reported ever using cigarettes, only 17% indicated that they remained daily smokers. Out of the
 2 surveyed students who reported ever using e-cigarettes daily, 58% remained daily users. This
 3 data demonstrates both that e-cigarette use in teens is very persistent, a result consistent with the
 4 addictiveness of JUUL and the difficulty teens have in trying to quit.²⁰⁴

5 131. E-cigarette use also puts adolescents at increased risk for cigarette smoking.
 6 Compared to adolescents who do not use e-cigarettes, those who do are 4 times more likely to
 7 begin smoking cigarettes.²⁰⁵

8 132. The dangerous and destructive nature of nicotine is no recent discovery. As a key
 9 ingredient in tobacco products, the drug and its deleterious effects have been the subject of
 10 scientific research and public health warnings for decades. Nicotine causes cardiovascular,
 11 reproductive, and immunosuppressive problems with devastating effects. Part of the reason the
 12 national decline in cigarette use in recent years was such a victory for public health was because
 13 there was a corresponding decline in teen exposure to nicotine. From 2000 to 2017, the smoking
 14 rate among high school students fell by 73%.²⁰⁶

15 133. That trend has completely reversed. In 2018, more than one in four high school
 16 students in the United States reported using a tobacco product in the past thirty days, a dramatic
 17 increase from just one year before.²⁰⁷ But there was no increase in the use of cigarettes, cigars, or
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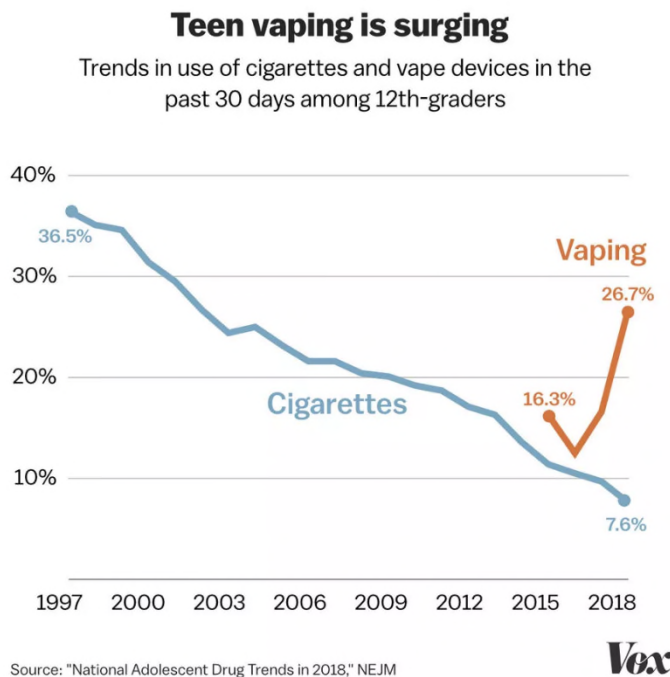
23 ²⁰⁴ *Id.* at 2.

24 ²⁰⁵ Kaitlyn M. Berry et al., *Association of Electronic Cigarette Use with Subsequent Initiation of Tobacco*
Cigarettes in US Youths, JAMA Network Open (Feb. 1, 2019),
<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2723425>.

25 ²⁰⁶ Matthew L. Myers, *Press Release: On 20th Anniversary of State Tobacco Settlement (the MSA), It's Time for*
Bold Action to Finish the Fight Against Tobacco, Campaign for Tobacco-Free Kids (Nov. 26, 2018),
https://www.tobaccofreekids.org/press-releases/2018_11_26_msa20.

26 ²⁰⁷ *Progress Erased: Youth Tobacco Use Increased During 2017-2018*, Ctrs. for Disease Control & Prevention (Feb.
 11, 2019), <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

hookahs during that same time period.²⁰⁸ There was only increased use in a single tobacco product: e-cigarettes. While use of all other tobacco products continued to decrease as it had been for decades, e-cigarette use increased 78% in just one year.²⁰⁹ This drastic reversal caused the CDC to describe youth vaping an “epidemic.”²¹⁰



134. The teen vaping epidemic has had, and will continue to have, significant costs for individual users and society alike. Nicotine addiction alone carries significant health consequences, and these are exacerbated when adolescents are involved. Adolescent nicotine

²⁰⁸ *Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason*, Ctrs. for Disease Control & Prevention (Feb. 2019), <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

²⁰⁹ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes*, U.S. Food & Drug Admin. (Nov. 15, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access>.

²¹⁰ Adams, *supra* note 2.

addiction leads to memory and attention problems, and increase chances of addiction later in life, all of which will continue to have long-lasting impacts on society.

135. Science is also beginning to show that e-cigarettes have the potential to cause even more, distinct health risks and costs. The very same liquids that enable e-cigarettes to deliver nicotine with such potency are proving to be increasingly dangerous. When heated, the vape liquid turns into aerosol, which may contain, in addition to nicotine, ultrafine toxic particles such as lead, additional chemicals, and volatile organic compounds.²¹¹ These chemicals have the potential to be deadly. Vaping is now linked to conditions like chronic obstructive pulmonary disease and seizures, and there were 193 possible cases of severe lung illness associated with e-cigarette product use in 22 states in less than two months in the summer of 2019 alone.²¹² Public health officials reported the first known death from a vaping-related illness on August 23, 2019.²¹³ On September 11, 2019, a teenager became the first person in Washington State to be diagnosed with a severe lung disease associated with vaping.²¹⁴ By October 10, 2019, lung illness tied to vaping had killed 26 people, and there were over 1,300 possible cases of serious illness reported from 49 states.²¹⁵ Only Alaska has not yet seen a case. 16% of these patients have

²¹¹ Lena H. Sun, *He went from hiking enthusiast to 'on death's door' within days. Doctors blamed vaping*, Wash. Post (Aug. 24, 2019), https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vaping-related-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true.

²¹² CDC, FDA, *States Continue to Investigate Severe Pulmonary Disease Among People Who Use E-cigarettes*, Ctrs. for Disease Control & Prevention (Aug. 21, 2019), <https://www.cdc.gov/media/releases/2019/s0821-cdc-fda-states-e-cigarettes.html>.

²¹³ Matt Richtel & Sheila Kaplan, *First Death in a Spate of Vaping Sickesses Reported by Health Officials*, N.Y. Times (Aug. 23, 2019), <https://www.nytimes.com/2019/08/23/health/vaping-death-cdc.html>.

²¹⁴ Nicole Brodeur & Ryan Blethen, *King County teen is first in state diagnosed with severe lung disease related to vaping*, Seattle Times (Sept. 11, 2019), <https://www.seattletimes.com/seattle-news/health/king-county-teen-is-first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/>.

²¹⁵ Nicole Brodeur & Ryan Blethen, *King County teen is first in state diagnosed with severe lung disease related to vaping*, Seattle Times (Sept. 11, 2019), <https://www.seattletimes.com/seattle-news/health/king-county-teen-is-first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/>.

1 been under the age of 18.²¹⁶ In October 2019, a 17-year-old boy from New York became the first
 2 child to die from vaping-related respiratory illness.²¹⁷ These numbers continue to rise. By
 3 November 5, 2019, 2,051 cases of vaping-related lung injuries had been reported and 39 deaths
 4 had been confirmed by the CDC.²¹⁸

5 136. Many teenagers are simply unaware of these risks, an ignorance that JUUL preys
 6 on. According to Dr. Winickoff, many of his patients believe JUULing is harmless:
 7

8 Counseling teens and preteens on e-cigarette use is challenging. Many of my
 9 patients have wildly incorrect beliefs about e-cigarettes. They know that cigarettes
 10 are dangerous, but assume that Juul—since it’s ubiquitous, comes in child-
 11 friendly flavors, and is marketed as a healthier alternative to smoking—must be
 12 harmless. I have to explain to kids that e-cigarettes do not have the same positive
 13 health benefits as the fruits whose flavor they copy. Even the term vapor calls to
 14 mind harmless water vapor. There is no water in these products.

15 Winickoff Testimony at 1.

16 **H. JUUL’s Remedial Measures**

17 137. In the face of increasing public scrutiny and pressure, JUUL has taken action to
 18 curb underage use of its products, but its efforts have been ineffective at best and aggravating at
 19 worse. After media and researchers brought JUUL’s advertising tactics front and center, it
 20 launched a new ad campaign focusing on former smokers and deleted social media accounts.
 21 But, JUUL designed its social media campaign to subsist off of user-made content, which
 22 remains unaffected by the absence of a JUUL-run account. In fact, as noted above, posts relating
 23 to JUUL increased after it stopped its own social media advertising.

24 ²¹⁶ Denise Grady, *Vaping Illnesses Top 1,000, C.D.C.*, N.Y. Times (Oct. 3, 2019),
<https://www.nytimes.com/2019/10/03/health/vaping-illnesses-cdc.html>.

25 ²¹⁷ Ed Shanahan & Azi Paybarah, *Bronx Teenager’s Death Is the Youngest Vaping Fatality in U.S.*, N.Y. Times
 (Oct. 8, 2019), <https://www.nytimes.com/2019/10/08/nyregion/vaping-death.html>.

26 ²¹⁸ *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, Ctrs. for Disease Control
 & Prevention (Nov. 8, 2019), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html.

138. In November 2018, JUUL announced changes to the sale and marketing of its flavored pods, but these changes are similarly unlikely to be effective in curbing the crisis. JUUL slightly modified its flavor names (i.e., “Cool Mint” is now “Mint,” “Crème Brulee” is now “Creme”), and it limited the flavors carried by retail stores to tobacco, menthol, and mint, while continuing to offer the full range of flavors (including the popular Mango) online—a market which teens are particularly adept at navigating. As Dr. Winickoff testified before Congress:

[it is] completely false to suggest that mint is not an attractive flavor to children. From candy canes to toothpaste, children are introduced to mint flavor from a young age. Not only do children enjoy mint, but it has special properties that make it an especially dangerous flavor for tobacco. Menthol’s anesthetic properties cool the throat, mask the harshness of nicotine, and make it easier for children to start using and continue using tobacco products. The impact of mint and menthol flavors on increasing youth tobacco addiction is well documented.

Winickoff Testimony at 3.

139. According to Dr. Winickoff, 80% of children get e-cigarettes from social sources, such as older friends, meaning that if the products are available for sale somewhere, children will get them.²¹⁹

140. On October 17, 2019, JUUL announced that it would suspend the sale of certain flavors online.²²⁰ However, this is likely to have minimal impact given that JUUL was continuing to sell the mint and menthol flavors. Recent research shows that 60% of high school JUUL users prefer mint and menthol.²²¹ Robin Koval, CEO and president of Truth Initiative, echoed Dr. Winickoff’s testimony, stating that that mint and menthol are among the most

²¹⁹ *Id.*

²²⁰ Allison Aubrey, *Juul Suspends Sales of Flavored Vapes and Signs Settlement to Stop Marketing to Youth*, NPR (Oct. 17, 2019), <https://www.npr.org/sections/health-shots/2019/10/17/771098368/juul-suspends-sales-of-flavored-vapes-and-signs-settlement-to-stop-marketing-to->.

²²¹ Lindsey Tanner, *US teen vaping numbers climb, fueled by Juul & mint flavor*, Associated Press (Nov. 5, 2019), <https://apnews.com/8151770f69fd43c4b132854a335d0ef1>.

1 popular flavors for youth and that “We also know, as does the tobacco industry, that menthol has
 2 been and continues to be the starter flavor of choice for young cigarette users.”²²² As former
 3 New York City Mayor Mike Bloomberg put it, “JUUL’s decision to keep mint- and menthol-
 4 flavored e-cigarettes on the shelves is a page right out of the tobacco industry’s playbook.”²²³
 5 Almost a month later, JUUL announced that it would stop selling mint, but will continue to sell
 6 menthol flavored products.²²⁴

8 141. In addition, JUUL’s claimed attempts to limit the sale of flavored products have
 9 not been effective. On November 4, 2019, VICE Magazine reported that when it visited more
 10 than 20 stores in New York City, all but two of the stores selling JUUL products had at least one
 11 of the banned flavors available in stores, including the popular mango flavor.²²⁵ Some of these
 12 stores were displaying these products even after JUUL announced that it would suspend the sale
 13 of certain flavors online. According to one bodega owner, the last time a JUUL representative
 14 came into his store, flavored pods like mango were on display, but the representative said
 15 nothing about them.²²⁶ Photographs taken for this article show both mango flavored JUUL
 16 products and flavored Eonsmoke products are still being sold side by side as recently as mid-
 17 October 2019.

19 I. JUUL and Schools

20 142. In addition to severe health consequences, widespread “JUULing” has placed
 21 severe burdens on society and schools in particular. It is not an overstatement to say that JUUL
 22

23 ²²² *Id.*

24 ²²³ *Id.*

25 ²²⁴ Associated Press, *Juul Halts Sales of Mint, Its Top-Selling e-Cigarette Flavor*, N.Y. Times (Nov. 7, 2019),
<https://www.nytimes.com/aponline/2019/11/07/health/bc-us-med-juul-flavor.html>.

26 ²²⁵ Hannah Smothers, *JUUL’s ‘Banned’ Flavors Are Still Absolutely Available in New York City*, VICE (Nov. 4,
 2019), https://www.vice.com/en_us/article/xwepnj/juul-pod-banned-flavors-still-available-in-new-york-city.

²²⁶ *Id.*

1 has changed the educational experience of students across the nation. As one vape shop manager
 2 told KOMO News, “It’s the new high school thing. Everyone’s got the JUUL.”²²⁷

3 143. According to a student at Eastlake High School in Washington, JUUL is “[v]ery
 4 popular. Every grade at my school. I’m a senior and all the freshmen, sophomore, junior, we all
 5 do ’em.”²²⁸ Another student at a Seattle-area high school told a news reporter, “Everyone I know
 6 who has had access to nicotine has done it through a JUUL,” and that her friends use JUUL even
 7 though they would not smoke cigarettes.²²⁹

8 144. JUUL use has completely changed school bathrooms—now known as “the Juul
 9 room.”²³⁰ As one high school student explained, “it’s just a cloud.”²³¹ The ubiquity of JUUL use
 10 in high school bathrooms has generated numerous online spoofs about “the juul room.”
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22 ²²⁷ *Juuling at School*, supra note 85.

23 ²²⁸ *Id.*

24 ²²⁹ Alison Grande, ‘Juuling’: Vaping device that looks like USB drive popular with teens, KIRO 7 News (Dec. 8,
 25 2017), <https://www.kiro7.com/news/local/juuling-vaping-device-that-looks-like-usb-drive-popular-with-teens/660965605>.

26 ²³⁰ Moriah Balingit, *In the ‘Juul room’: E-cigarettes spawn a form of teen addiction that worries doctors, parents and schools*, Wash. Post (July 26, 2019), https://www.washingtonpost.com/local/education/helpless-to-the-draw-of-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a-11e9-933d-7501070ee669_story.html.

²³¹ Greta Jochem, *Juuling in School: e-Cigarette Use Prevalent Among Local Youth*, Daily Hampshire Gazette (Nov. 13, 2018), <https://www.gazettenet.com/Juuling-in-Schools-21439655>.



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145. As another high school student explained, “You can pull it out, you can have it anywhere. To smoke a cigarette you have to hit the bus stop. You want a Juul you hit the bathroom, it’s easy.”²³³ He added that JUUL “market[s] it as an alternative to cigarettes but really it’s a bunch of kids who have never picked up a pack and they’re starting their nicotine addiction there.”²³⁴ Students at another high school stated that classmates had “set off the fire alarm four times last year from vaping in the bathrooms [at school],” adding that it is commonplace to see students vaping in school bathrooms or in the parking lot.²³⁵

²³² *Juul Hashtag Meme*, Stan. U. Res. into the Impact of Tobacco Advert. (2018), http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st681.php&token1=fm_pods_img37610.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=%23juul.

²³³ Grande, *supra* note 229.

²³⁴ *Id.*

²³⁵ Manisha Jha, ‘You need to stop vaping right now’: Students and faculty react to Washington vape ban, *The Daily, U. of Wash.* (Sept. 30, 2019), http://www.dailyuw.com/news/article_960d8692-e324-11e9-870c-9f9d571115d6.html.

1 146. Kids have also coined the term “nic sick”—which, as one high school student
2 explained to CBS News, “kinda seems like a really bad flu, like, just out of nowhere. Your face
3 goes pale, you start throwing up and stuff, and you just feel horrible.”

4 147. Such rampant JUUL use and use of copycat products like Eonsmoke has
5 effectively added another category to teachers’ and school administrators’ job descriptions; many
6 now receive special training to respond to the various problems that JUUL use presents, both in
7 and out of the classroom. A national survey of middle schools and high schools found that 43.3%
8 of schools have had to implement not only an e-cigarette policy but a JUUL-specific policy.
9 Participants in the survey reported multiple barriers to enforcing these policies, including the
10 discreet appearance of the product, difficulty pinpointing the vapor or scent, and the addictive
11 nature of the product.
12

13 148. Across the United States, schools have had to divert resources and administrators
14 have had to go to extreme lengths to respond to the ever-growing number of students using
15 JUULs on school grounds. According to the Truth Initiative, more than 40 percent of all teachers
16 and administrators reported that their school uses camera surveillance near the school’s restroom,
17 almost half (46 percent) reported camera surveillance elsewhere in the school, and 23 percent
18 reported using assigned teachers for restroom surveillance. Some schools have responded by
19 removing bathroom doors or even shutting bathrooms down, and schools have banned flash
20 drives to avoid any confusion between flash drives and JUULs. Schools have also paid thousands
21 of dollars to install special monitors to detect vaping, which they say is a small price to pay
22 compared to the plumbing repairs otherwise spent as a result of students flushing vaping
23 paraphernalia down toilets. Other school districts have sought state grant money to create new
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26

1 positions for tobacco prevention supervisors, who get phone alerts when vape smoke is detected
2 in bathrooms.

3 149. Many schools have shifted their disciplinary policies in order to effectively
4 address the youth vaping epidemic. Rather than immediately suspending students for a first
5 offense, school districts have created anti-vaping curricula which students are required to follow
6 in sessions held outside of normal school hours, including on Saturdays. Teachers prepare
7 lessons and study materials for these sessions with information on the marketing and health
8 dangers of vaping—extra work which requires teachers to work atypical hours early in the
9 mornings and on weekends. Some schools will increase their drug testing budget to include
10 random nicotine tests for students before they join extracurricular activities. Under this drug-
11 testing protocol, first offenders will undergo drug and alcohol educational programming; second
12 and third offenders will be forced to sit out from extracurriculars and attend substance abuse
13 counseling.
14
15

16 150. JUUL's prevalence in schools is not a coincidence; JUUL actively sought to enter
17 school campuses. The Subcommittee on Economic and Consumer Policy ("Subcommittee")
18 conducted a months-long investigation of JUUL, including reviewing tens of thousands of
19 internal documents, and concluded that JUUL "deliberately targeted children in order to become
20 the nation's largest seller of e-cigarettes."²³⁶ The Subcommittee found that "(1) JUUL deployed
21 a sophisticated program to enter schools and convey its messaging directly to teenage children;
22 (2) JUUL also targeted teenagers and children, as young as eight years-old, in summer camps
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²³⁶ *Memorandum*, U.S. House Subcommittee on Econ. & Consumer Policy (July 25, 2019),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

1 and public out-of-school programs; and (3) JUUL recruited thousands of online ‘influencers’ to
 2 market to teens.’’²³⁷

3 151. According to the Subcommittee, JUUL was willing to pay schools and
 4 organizations hundreds of thousands of dollars to have more direct access to kids. Such attempts
 5 included paying a Baltimore charter school organization \$134,000 to start a summer camp to
 6 teach kids healthy lifestyles, for which JUUL itself would provide the curriculum; offering
 7 schools \$10,000 to talk to students on campus; and giving the Police Activities League in
 8 Richmond, California, \$90,000 to provide JUUL’s own vaping education program, “Moving
 9 On,” to teenage students suspended for using cigarettes. Meanwhile, JUUL would collect data
 10 about test scores, surveys, and activity logs about the students.
 11

12 152. Among the more egregious incidents reported by the Subcommittee was a July
 13 24, 2019 presentation in which no parents or teachers were in the room for the presentation, the
 14 message conveyed was that the JUUL product was “totally safe,” and the presenter even
 15 demonstrated to the students how to use a JUUL. The school was presumably paid for this
 16 meeting, which was marketed to the school as an anti-smoking initiative. A JUUL spokesman
 17 said JUUL is no longer funding such programs.
 18

19 **J. Impact on Skagit County**

20 153. Plaintiff Skagit County, located in northwest Washington State, has
 21 approximately 128,000 residents.²³⁸ Situated between the Salish Sea and the Cascade Mountains,
 22 Skagit County is best known for its agricultural industry.²³⁹
 23

24 ²³⁷ *Id.*

25 ²³⁸ *Quick Facts Skagit County, Washington*, U.S. Census Bureau,
 26 <https://www.census.gov/quickfacts/fact/table/skagitcountywashington,WA/PST045218> (last visited Nov. 8, 2019).

²³⁹ Anneliese Vance-Sherman, Ph.D., *Skagit County profile*, Wash. State Emp. Security Dep’t, (Jan. 2019)
<https://esd.wa.gov/labormarketinfo/county-profiles/skagit>.

1 154. Skagit County has also been hit hard by the youth vaping epidemic. Vapor
 2 product use among Skagit County 8th graders is higher than the statewide average, and the
 3 percentage of 10th graders who report current use of vapor products increased from 11% to 18%
 4 in just two years.²⁴⁰ Vapor product use among Skagit County 12th graders increased from 18% to
 5 29% over that same time period.²⁴¹

6
 7 155. This rapid increase is consistent with the rise in youth vaping throughout
 8 Washington State. Although the percentage of teens reporting cigarette smoking in 2018 is less
 9 than half of what it was a decade ago, youth vapor product use increased significantly between
 10 2016 and 2018.²⁴² In addition, survey results statewide indicate that certain populations already
 11 affected by health disparities may be significantly affected by the spread of vaping, with the
 12 highest rate of vaping among 8th graders reported by Hispanic youth and the highest rate among
 13 both 10th and 12th graders reported by Non-Hispanic American Indian/Alaska Native students.²⁴³
 14 Many Washington youth also do not understand the dangers of vaping. According to a statewide
 15 survey of Washington students, approximately two-thirds of 10th graders did not believe vaping
 16 to be harmful.²⁴⁴

17
 18 156. Washington State has recognized the urgency of the youth vaping crisis and taken
 19 steps to address it. On September 27, 2019, Governor Jay Inslee ordered the Washington State
 20
 21

22
 23 ²⁴⁰ Johnson & Leibbrand, *supra* note 8; *County-level HYS 2018*, *supra* note 8. “Current use” is defined as at least
 once within the last 30 days.

24 ²⁴¹ *Id.*

25 ²⁴² Amy Blondin & Kristen Maki, *Alcohol use remains at an all time low while vaping use increases among*
Washington youth, Wash. State Health Youth Survey (Mar. 18, 2019),
[http://www.askhys.net/Docs/Healthy%20Youth%20Survey%20Substance%20Use%20Press%20Release%20Fin](http://www.askhys.net/Docs/Healthy%20Youth%20Survey%20Substance%20Use%20Press%20Release%20Final.pdf)
 26 [al.pdf](http://www.askhys.net/Docs/Healthy%20Youth%20Survey%20Substance%20Use%20Press%20Release%20Final.pdf).

²⁴³ *Id.*

²⁴⁴ Blondin & Maki, *supra* note 242.

1 Department of Health to ban all flavored vaping products.²⁴⁵ Governor Inslee agreed with the
 2 FDA: “e-cigarette use among youth has reached epidemic proportions and this epidemic presents
 3 a clear and present danger.”²⁴⁶ He explained that “vapor products containing nicotine are the
 4 most commonly used nicotine products in Washington among youth,” that “vapor product use
 5 increased dramatically among 8th, 10th, and 12th graders between 2016 and 2018” and that “an
 6 overwhelming majority” of youth who use vape using flavored products.”²⁴⁷ Inslee found that
 7 “the appeal of flavored nicotine products, as well as advertising and promotion activities targeted
 8 at youth, are contributing to the dramatic increase in youth vaping.”²⁴⁸

10 157. On October 9, 2019, the Washington State Board of Health approved an
 11 emergency ban on the sale of flavored vaping products.²⁴⁹ Inslee welcomed the decision, saying
 12 that it was necessary to “act on this very important public health issue” to “protect the health of
 13 Washingtonians, especially young people. These emergency rules will help protect public health
 14 and save lives.”

16 158. Plaintiff Skagit County has been proactive in trying to combat youth vaping and
 17 warn the public of the dangers of vaping. In April of 2019, the Skagit County Board of Health
 18 enacted its own measures to address the rapid rise in vaping, approving a ban on smoking and
 19 vaping in public places within the County. The County’s ordinance prohibits the use of tobacco
 20 and vapor products in indoor public places and places of employment, as well as in outdoor
 21 public places where children congregate, and is intended to “reduce access and exposure to
 22

23 ²⁴⁵ Inslee, *supra* note 98.

24 ²⁴⁶ *Id.*

25 ²⁴⁷ *Id.*

26 ²⁴⁸ *Id.*

²⁴⁹ King 5 Staff, *Washington Board of Health bans flavored vaping products*, King 5 News (Oct. 9, 2019),
<https://www.king5.com/article/news/local/washington-board-of-health-bans-flavored-vaping-products/281-ddad5104-7d18-4f96-a2c5-6ff1ed162428>.

1 smoking and vaping for children and youth, as well as promote a healthier environment for all
 2 residents.”²⁵⁰ This ordinance was proposed by Skagit County Public Health in order to combat
 3 the impression, cultivated by Defendants, that vaping is safe, which “contribut[es] to the problem
 4 of rapidly increasing youth use of e-cigarettes and vapor devices.”²⁵¹

5 159. During the hearing on the ordinance, Skagit County’s Health Analyst spoke about
 6 Skagit County’s work to combat the youth vaping epidemic and JUUL use in particular:
 7

8 Nicotine is highly addictive. We know since the ‘70s we’ve been combating things
 9 that market tobacco products to youth, such as characters, cartoons, Joe Camel;
 10 there has been regulations around those things, but with e-cigarettes we see things
 11 like . . . flavored juices in these e-cigarettes. Those are clearly products that are
 12 aimed toward younger people and not adults.

13 . . .
 14 The most ubiquitous product is JUUL . . . 75% of the e-cigarette market nationally
 15 are in sales of JUULs. JUUL has become a verb, the young people don’t say they’re
 16 vaping, they’re “juuling.” They are often found in the classrooms. Teachers at first
 17 didn’t know what they were. We are now going out and doing some education to
 18 behavioral health providers, to schools, to any community forum that is interested
 19 in this and helping them to understand what these are.

20 . . .
 21 In Public Health, we are very concerned about the rapidly increasing use by youth
 22 and adolescents. . . . [F]or many years, we’ve been focusing on decreasing tobacco
 23 and cigarette by teens and we’ve been doing pretty good at that. But when these e-
 24 cigarettes came onto the market . . . youth are now switching from cigarettes to e-
 25 cigarettes. And this is really important because 95%, according to the CDC, 95%
 26 of adults who smoke cigarettes began nicotine addiction under the age of 18. That’s
 pretty significant. High schools are now seeing more of these e-cigarette devices
 than they ever had; they are being left behind in classrooms where kids are charging
 them, even though they are not supposed to be used there, we know that they are.
 And when we asked youth in Washington state and locally what they’re current
 past 30 days electronic cigarette use was . . . and we compared that locally and to
 the state, we see that its very concerning that the use among our 8th graders is higher
 than the statewide average. And there is also increasing use by our older high
 schoolers.²⁵²

²⁵⁰ *Board of Health ordinance restricts smoking and vaping in public places*, Skagit County Pub. Health (July 9, 2019), <https://www.skagitcounty.net/Departments/Health/VAPINGfeedback.htm>.

²⁵¹ Johnson & Leibrand, *supra* note 8.

²⁵² *Record of Proceedings of Meeting of Skagit County Board of Commissioners*, Skagit County Wash. (Mar. 12, 2019), https://skagit.granicus.com/MediaPlayer.php?view_id=8&clip_id=3026 (testimony of Skagit County Health Analyst).

1 160. By unanimous vote of the Skagit County Board of Commissioners, Plaintiff
 2 approved the ban. Plaintiff found that “vapor products including electronic cigarettes (e-
 3 cigarettes) commonly contain nicotine, a highly addictive drug that negatively impacts the
 4 developing brain and present a substantial risk of nicotine or other substance addition” and that
 5 “Skagit County has experienced a significant increase in youth usage of e-cigarettes and other
 6 vapor products.”²⁵³

8 161. In approving the ban on vaping in public places and places of employment, the
 9 Skagit County Board of Health made it clear that “smoking and vaping is a community health
 10 concern.”²⁵⁴ Skagit County Public Health identified several public health concerns with vaping
 11 in public places, including that “vaping exposes people nearby to an aerosol containing an
 12 unknown mixture of harmful and potentially harmful chemicals,” and that “allowing vaping
 13 where smoking is prohibited implies that it’s safe, contributing to the problem of rapidly
 14 increasing youth use of e-cigarettes and vapor devices.”²⁵⁵

16 162. Washington State’s emergency ban on flavored vaping products and the Skagit
 17 County’s clean air ordinance are important steps, but these measures cannot fully address the
 18 existing widespread use of vapor products and resulting nicotine addiction among youth.
 19 Because of the potency of JUUL’s nicotine salts and the ease of delivery—allowing kids to take
 20 a puff as often as every few minutes—widespread “juuling” has created a problem of addiction
 21 much greater than that caused by youth cigarette smoking. As Skagit County’s Health Analyst
 22

24
 25 ²⁵³ Resolution No. R20190048, Skagit County Board of Commissioners (Mar. 12, 2019),
https://www.skagitcounty.net/Health/Documents/Vaping/Resolution_PublicHearing.pdf; *see also* Record of
 26 Proceedings of Meeting of Skagit County Board of Commissioners, *supra* note 252.

²⁵⁴ *Supra* note 250.

²⁵⁵ Johnson & Leibrand, *supra* note 8.

1 explained, the only natural stopping point with pod-based vaping devices comes when the user
 2 reaches the end of a pod, which contains roughly as much nicotine as 20 cigarettes:

3 [L]et's talk about how people smoke. When you smoke a cigarette, you have a
 4 moment where you can decide, you've smoked that entire cigarette, you can decide,
 5 am I going to pick up another one, am I in an environment where I can smoke
 6 another one, and it's a moment where you get to make this decision. With these
 e-cigarettes devices, it's all there, there's no end until you've already smoked a
 whole pack worth.²⁵⁶

7 This in turn creates behavioral as well as health issues that are affecting communities and youth
 8 in Skagit County. For example, a music teacher at Anacortes High School, who had noticed that
 9 some of her student singers were short of breath and struggling to hold their notes, realized
 10 through conversations with her students how popular vaping had become at the high school and
 11 that students are experiencing "acid indigestion, anxiety, depression and concentration
 12 problems—all which started when they began using nicotine products on a regular basis."²⁵⁷
 13 Even once youth understand the risks, it is not easy to stop vaping. As one Anacortes High
 14 School student put it: "it's crazy that there's a product marketed to help you quit smoking that is
 15 so addictive itself."²⁵⁸

16
 17
 18 163. In Skagit County as well as nationally, available treatment options for youth with
 19 nicotine addiction are limited. The risk of addiction from vapor products, however, is extremely
 20 high, and adolescents are particularly vulnerable to developing an addiction that may have long-
 21 lasting consequences. As the researchers conducting the national Monitoring the Future survey
 22 wrote in a letter to the New England Journal of Medicine last month, current efforts are
 23 insufficient to address youth nicotine addiction from vaping:
 24

25 ²⁵⁶ Testimony of Skagit County Health Analyst, *supra* note 252.

26 ²⁵⁷ Anacortes School District, 'Vaping' craze poses health risks to teens, Anacortes Pride (June 2019),
http://www.asd103.org/UserFiles/Servers/Server_263826/File/Currents/AnacortesPride-June2019.pdf.

²⁵⁸ *Id.*

1 Current efforts by the vaping industry, government agencies, and schools have
 2 thus far proved insufficient to stop the rapid spread of nicotine vaping among
 3 adolescents. Of particular concern are the accompanying increases in the
 4 proportions of youth who are physically addicted to nicotine, an addiction that is
 5 very difficult to overcome once established. The substantial levels of daily vaping
 6 suggest the development of nicotine addiction. New efforts are needed to protect
 7 youth from using nicotine during adolescence, when the developing brain is
 8 particularly susceptible to permanent changes from nicotine use and when almost
 9 all nicotine addiction is established.²⁵⁹

10 164. For Plaintiff Skagit County, interrupting the cycle of addiction is a high priority.
 11 Skagit County Public Health currently has a dedicated prevention team consisting of 2.5 full-
 12 time employees, who have been working to educate and support local youth and families dealing
 13 with addiction, including from vaping. One of the challenges, however, is that misinformation
 14 about vaping is widespread, and parents as well as teens do not realize the risks. Skagit County
 15 Public Health has thus spent substantial time and resources developing and disseminating
 16 materials about the dangers of youth vaping. For example, Public Health staff respond to
 17 frequent calls from teachers and administrators about vaping and regularly conduct in-person
 18 trainings at Skagit County, armed with a tackle box of vapor products to start with the basics—
 19 how to recognize vaping devices and pods. Skagit County Public Health has also created cards
 20 with talking points about vaping for parents and caregivers, at multiple stages of youth
 21 development, kindergarten through high school age.

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²⁵⁹ *Trends in Adolescent Vaping*, *supra* note 4. **Error! Hyperlink reference not valid.**

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talking points: TOBACCO

Grade 9+

own the conversation

Tobacco marketing, social media, and negative peer pressure can be very influential in a teen's life. Be prepared to answer questions that your teen may have about tobacco. Here are some helpful answers for those difficult questions:

1. **"Isn't vaping safer than smoking cigarettes?"** Your child may be exposed to less toxic substances when vaping (as compared to smoking), but **there are still significant concerns.** "Safer" does not mean that it is safe.
2. **"It's just flavoring, so what's the big deal?"** Relatively little is known about flavoring chemicals and their long-term effects on the body. Many e-liquids contain more than just flavorings, such as nicotine, fine particles, metals, and other toxins.
3. **"Everyone is doing it, so why do you care?"** You can say, "I know you may say this because of what you see in school or even on social media, but **the majority of students aren't vaping.** While it may be a popular activity for some kids, it doesn't mean that it's safe."
4. **"I don't know what to say when other kids offer their vape to me to try."** You can say, "Let's figure out what you may be comfortable saying."
5. **"Doesn't vaping help people quit smoking cigarettes?"** While vaping may help some adults quit smoking, it has **not been proven** to be an effective long-term cessation solution.

For more information about this campaign, please contact Skagit County Public Health at (360) 416-1590. Funding provided by Skagit County Public Health and the Washington State Health Care Authority.

07/19

165. Recognizing the importance of peer-to-peer messaging in this context, Public Health has also begun piloting a peer coaching program. Peer-to-peer messaging is critical because it is necessary to change the social norms around vaping, just as previous efforts ultimately changed social norms around cigarette smoking.

1 166. Skagit County school and community organizations are also working together to
 2 bring awareness to the dangers of vaping. In Skagit County, there are three coalitions established
 3 through the statewide Community Prevention and Wellness Initiative (“CPWI”): MV Hope
 4 Coalition, Sedro-Woolley RISE Coalition, and Concrete Resource Coalition. These CPWI
 5 Coalitions are actively implementing substance abuse prevention strategies in Skagit County
 6 communities, organizing youth and holding community meetings that address issues such as
 7 vaping in an effort to build a safe and healthy environment for youth. Other community members
 8 have responded to the vaping crisis in an ad hoc manner; for example, after a parent reached out
 9 to the respiratory care team at Island Hospital in Anacortes, a panel of respiratory therapists
 10 visited Anacortes High School classes to give an educational presentation about vaping,
 11 including their observations of young users who are patients and the addictiveness of the nicotine
 12 in e-cigarettes, especially for an adolescent’s developing brain.²⁶⁰ There is an urgent need for
 13 information; as the AHS teacher who hosted the panel noted, “It was very surprising to see how
 14 little the kids actually knew about what’s in the JUUL pods.”²⁶¹

17 167. While Plaintiff has been working tirelessly to address the youth vaping crisis,
 18 there is much more that is needed to fully counter Defendants’ conduct.

19 168. For example, with additional resources, Skagit County Public Health would work
 20 with a marketing company to develop a high-quality, effective education and prevention
 21 campaign tailored to youth. Funding is needed not only to produce the content of the campaign
 22 but also for full-time staff to implement and support the campaign. Resources would support
 23 bringing this messaging to every place youth are likely to see it, such as the ads in movie theaters
 24
 25

26 ²⁶⁰ Anacortes School District, *supra* note 257.

²⁶¹ *Id.*

1 that play just prior to the start of the movie, on the outside of public transit, and on the stands at
2 school sport events.

3 169. Importantly, funding is needed to create a cohort of trained youth educators. As
4 mentioned above, peer-to-peer messaging is especially important to change the social norms
5 around vaping. Defendants JUUL and Eonsmoke were adept at using peer-to-peer messaging to
6 promote their addictive products to kids, through social media campaigns and paid influencers.
7 Countering their conduct will requiring training and supporting youth to educate their peers.
8

9 170. In addition, resources are needed to train professionals who work with youth,
10 including pediatricians, community outreach workers, and substance abuse treatment providers,
11 to assess and treat youth nicotine addiction. Resources are needed to provide Continuing Medical
12 Education programs for doctors and dentists about vaping, including the evolving knowledge of
13 the risks of aerosol inhalation. Dentist and orthodontist appointments present a great opportunity
14 for conveying health messages to young people.
15

16 171. Even with a workforce trained in screening for youth nicotine addiction, however,
17 many Skagit County youth do not have ready access to health care providers, particularly in
18 more remote areas of the county. School-based health centers are an effective way to make
19 health care services available to youth. There are seven school districts in Skagit County, one of
20 which—the Sedro-Woolley School District—will soon open a school-based health center.
21 Additional health services embedded in schools could deliver developmentally appropriate,
22 culturally appropriate, and confidential services to students who are struggling with nicotine
23 addiction or withdrawal.
24

25 172. Fully addressing the harms to Skagit County caused by Defendants' conduct will
26 require a comprehensive approach. Without the resources to fund measures such as those

1 described herein, Skagit County will continue to be harmed by the ongoing consequences of
2 Defendants' conduct.

3 **V. CAUSES OF ACTION**

4 **COUNT ONE — VIOLATIONS OF THE WASHINGTON PUBLIC NUISANCE LAW,**
5 **RCW 7.48.010, *ET SEQ.***

6 173. Plaintiff Skagit County incorporates each preceding paragraph as though set forth
7 fully herein.

8 174. Plaintiff brings this claim under RCW 7.48.020.

9 175. Pursuant to RCW 7.48.010, an actionable nuisance is defined as, *inter alia*,
10 “whatever is injurious to health or indecent or offensive to the senses . . .”
11

12 176. Specifically, a “[n]uisance consists in unlawfully doing an act, or omitting to
13 perform a duty, which act or omission either annoys, injures or endangers the comfort, repose,
14 health or safety of others, offends decency . . . or in any way renders other persons insecure in
15 life, or in the use of property.” RCW 7.48.120.

16 177. Under Washington law, conduct that substantially and/or unreasonably interferes
17 with the Plaintiff's use of its property is a nuisance even if it would otherwise be lawful.
18

19 178. Pursuant to RCW 7.48.130, “A public nuisance is one which affects equally the
20 rights of an entire community or neighborhood, although the extent of the damage may be
21 unequal.”

22 179. Pursuant to Skagit County Code Chapter 14.44.120(3), “A violation is detrimental
23 to the public health, safety, and welfare and is a public nuisance. A public nuisance is a
24 continuing offense against the order and economy of Skagit County and is subject to abatement
25 both under this Chapter and RCW Chapter 7.48.”
26

1 180. Skagit County and its residents have a right to be free from conduct that
2 endangers their health and safety. Yet Defendants have engaged in conduct which endangers or
3 injures the health and safety of the residents of the County by their production, promotion,
4 distribution, and marketing of JUUL and Eonsmoke products for use by minors in Skagit County
5 and in a manner that substantially interferes with the functions and operations of Skagit County
6 and impacts the public health, safety, and welfare of the entire Skagit County and Washington
7 State communities.

9 181. Each Defendant has created or assisted in the creation of a condition that is
10 injurious to the health and safety of Plaintiff and its residents interferes with the comfortable
11 enjoyment of life and property of the entire communities of Skagit County and Washington State
12 at large.

14 182. Defendants' conduct has directly caused a severe disruption of the public health,
15 order, and safety. Defendants' conduct is ongoing and continues to produce permanent and long-
16 lasting damage.

17 183. This harm to the Plaintiff outweighs any social utility of the Defendants' wrongful
18 conduct because Defendants' conduct violates Washington's public policy against marketing
19 vapor products like JUUL and Eonsmoke to minors. This policy is expressed through
20 Washington State Governor Jay Inslee's Executive Order 19-03, finding that "it is the policy of
21 the state of Washington to support the health, safety, and well-being of all Washingtonians" and
22 that "e-cigarette use among youth has reached epidemic proportions and that this epidemic
23 presents a clear and present danger." This policy is also expressed through statutes and
24 regulations, including but not limiting to
25
26

- A. RCW 26.28.080, under which any person who sells, gives, or permits to be sold or given vapor products to a minor is guilty of a gross misdemeanor;
- B. RCW 70.345.140, under which it is illegal for minors to purchase vapor products; and
- C. RCW 70.345.090, under which it is illegal for any person to conduct a delivery sale or otherwise ship or transport, or cause to be shipped or transported, any vapor product ordered or purchased by mail or through the internet to a minor.

184. Defendants' conduct violated this public policy, including by

- A. Actively seeking to enter school campuses, targeting children as young as eight through summer camps and school programs, extensively targeting youth through social media campaigns, and recruiting "influencers" to market to teens;
- B. Engaging in marketing tactics specifically designed to mislead children and youth and to ensnare minors into nicotine addiction, including by explicitly adopting tactics prohibited from Big Tobacco, with the knowledge that those tactics were likely to ensnare children and youth into nicotine addiction, including using billboards and outdoor advertising, sponsoring events, giving free samples, paying affiliates and "influencers" to push JUUL products on JUUL's behalf, and by selling JUUL in flavors designed to appeal to youth;
- C. Engaging in advertising modeled on cigarette ads and featuring youthful-appearing models and designing advertising in a patently youth-oriented fashion;
- D. Directing advertising to youth media outlets and media designed to appeal to children and youth, such as Instagram and other social media channels;
- E. Hosting youth-focused parties across the United States, at which free samples were dispensed and in which vaping was featured prominently across social media;
- F. Formulating JUULpods and Eonsmoke products with flavors with the knowledge that such flavors appealed to youth and with the intent that youth become addicted or dependent upon JUUL products; and
- G. Promoting and assisting the growth of the vapor product market and its availability with knowledge that vapor products were being purchased and used by large numbers of youth.

1 185. The health and safety of the youth of Skagit County, including those who use,
2 have used, or will use vapor products, as well as those affected by others' use of vapor products,
3 are matters of substantial public interest and of legitimate concern to the Plaintiff, as well as to
4 the entire Skagit County and Washington State communities.

5 186. Defendants' conduct has affected and continues to affect a substantial number of
6 people within Skagit County and is likely to continue causing significant harm.

7 187. But for Defendants' actions, JUUL use by minors would not be as widespread as
8 it is today, and the youth vaping public health epidemic that currently exists as a result of the
9 Defendants' conduct would have been averted.

10 188. Logic, common sense, justice, policy, and precedent indicate Defendants' unfair
11 and deceptive conduct has caused the damage and harm complained of herein. Defendants knew
12 or reasonably should have known that their statements regarding the risks and benefits of JUUL
13 or Eonsmoke were false and misleading, that its marketing methods were designed to appeal to
14 minors, and that its false and misleading statements, marketing to minors, and active efforts to
15 increase the accessibility of JUUL products or Eonsmoke products and grow JUUL's market
16 share, or the market share of Eonsmoke, were causing harm to minors and to counties, including
17 minors in Skagit County and the County itself.

18 189. Thus, the public nuisance caused by Defendants was reasonably foreseeable,
19 including the financial and economic losses incurred by Skagit County.

20 190. Alternatively, Defendants' conduct was a substantial factor in bringing about the
21 public nuisance even if a similar result would have occurred without it. By directly marketing to
22 youth and continuing marketing practices after it was evidence that children were using JUUL
23 products in large numbers and were specifically using these products in school, JUUL directly
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1 facilitated the spread of the youth vaping epidemic and the public nuisance effecting Skagit
 2 County. By seeking to capitalize on JUUL's success in addicting minors to nicotine and by
 3 directly marketing to youth and continuing marketing practices after it was evident that children
 4 were using JUUL products and Eonsmoke products in large numbers and were specifically using
 5 these products in school, Eonsmoke directly facilitated the spread of the youth vaping epidemic
 6 and the public nuisance affecting Skagit County. By investing billions of dollars in JUUL and
 7 actively working to promote the sale and spread of JUUL products with knowledge of JUUL's
 8 practice of marketing its products to youth and failure to control youth access to its products,
 9 Altria directly facilitated the spread of the youth vaping epidemic and the public nuisance
 10 effecting Skagit County.
 11

12 191. In addition, engaging in any business in defiance of a law regulating or
 13 prohibiting the same is a nuisance per se under Washington law. Defendants' conduct described
 14 herein of deceptively marketing JUUL products or Eonsmoke Products to minors violates RCW
 15 7.48.010 and therefore constitutes a nuisance per se.
 16

17 192. Skagit County has statutory authority to abate a public nuisance pursuant to RCW
 18 7.48.220 as a public body authorized by RCW 36.32.120(10).
 19

20 193. Plaintiff has taken steps to address the harm caused by Defendants' conduct,
 21 including the following:

- 22 A. Spending time and resources assembling information about the dangers of
- 23 youth vaping and the extent of youth vaping in the County;
- 24 B. Collecting and publishing information about the youth vaping epidemic;
- 25 C. Writing newsletters and talking point cards about the dangers of youth
- 26 vaping, and ways parents can help combat the epidemic;

- D. Responding to calls from concerned parents seeking help for their children who are addicted to nicotine through vaping;
- E. Training teachers and parents to recognize vapor products;
- F. Educating teachers, parents, and youth about the risks of vaping;
- G. Banning vaping in public places and places of employment to combat the impression cultivated by Defendants that vaping is safe, which contributes to youth vaping; and
- H. Updating Skagit County's website to address the dangers of vapor product use.

194. Fully abating the epidemic of youth vaping resulting from Defendants' conduct will require much more than these steps.

195. Pursuant to RCW 7.48.020, Skagit County requests an order providing for abatement of the public nuisance that Defendants have created or assisted in the creation of, and enjoining Defendants from future violations of RCW 7.48.010.

196. Pursuant to RCW 7.48.020, Plaintiff also seeks the maximum statutory and civil penalties permitted by law, including actual and compensatory damages, as a result of the public nuisance created by Defendants.

197. Pursuant to RCW 4.22.070, Defendants are jointly and severally liable because they have acted in concert with each other and because Plaintiff is not at fault.

COUNT TWO — VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO"), 18 U.S.C. § 1961, *ET SEQ.*

198. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

1 199. This claim is brought by Plaintiff against each Defendant for actual damages,
 2 treble damages, and equitable relief under 18 U.S.C. § 1964 for violations of 18 U.S.C. § 1961,
 3 *et seq.*

4 200. At all relevant times, each Defendant is and has been a “person” within the
 5 meaning of 18 U.S.C. § 1961(3), because they are capable of holding, and do hold, “a legal or
 6 beneficial interest in property.”

7 201. Plaintiff is a “person,” as that term is defined in 18 U.S.C. § 1961(3), and has
 8 standing to sue as it was and is injured in its business and/or property as a result of the
 9 Defendants’ wrongful conduct described herein.

10 202. Section 1962(c) makes it “unlawful for any person employed by or associated
 11 with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce,
 12 to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through
 13 a pattern of racketeering activity” 18 U.S.C. § 1962(c).

14 203. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section
 15 1962(c), among other provisions. *See* 18 U.S.C. § 1962(d).

16 204. Each Defendant conducted the affairs of an enterprise through a pattern of
 17 racketeering activity, in violation of 18 U.S.C. § 1962(c) and § 1962(d).

18 **A. Description of the Defendants’ Enterprises**

19 205. RICO defines an enterprise as “any individual, partnership, corporation,
 20 association, or other legal entity, and any union or group of individuals associated in fact
 21 although not a legal entity.” 18 U.S.C. § 1961(4).

22 206. Under 18 U.S.C. § 1961(4) a RICO “enterprise” may be an association-in-fact
 23 that, although it has no formal legal structure, has (i) a common purpose, (ii) relationships among
 24

1 those associated with the enterprise, and (iii) longevity sufficient to pursue the enterprise's
2 purpose. *See Boyle v. United States*, 556 U.S. 938, 946 (2009).

3 207. Defendant JUUL and the Altria Defendants formed an association-in-fact
4 enterprise—referred to herein as the JUUL Enterprise. The JUUL Enterprise is an ongoing and
5 continuing business organization consisting of “persons” within the meaning of 18 U.S.C. §
6 1961(3) that created and maintained systematic links for a common purpose: to maintain and
7 expand JUUL’s massive, and ill-gotten, share of the e-cigarette market.
8

9 208. As set forth above, Big Tobacco has long known the importance of targeting
10 youth and addicting them to nicotine. This profits-above-public-health mentality applies with
11 equal force to e-cigarette market as well as the market for regular cigarettes. What was
12 different here was that Big Tobacco was out-competed by a start-up, albeit a start-up using some
13 of Big Tobacco’s tried and true tactics. As set forth in the complaint, JUUL obtained its massive
14 market share over a short time period by successfully targeting youth and addicting youth to
15 nicotine.
16

17 209. JUUL was well aware that its conduct was reprehensible, and that if it became
18 established and widely known that this was how JUUL obtained its massive market share, there
19 would likely be severe consequences. For this reason, it went to great lengths to conceal this
20 conduct by vociferously denying that it was marketing and targeting youth. Instead, JUUL
21 argued that its product was created and designed as a “smoking cessation device”—despite the
22 fact that the FDA never approved it as such, and that this smoking cessation device was slickly
23 designed, easily concealable, and had its own “party mode.” These false statements were
24 designed to protect JUUL’s market share by concealing its misconduct.
25
26

B. The Enterprises Sought to Fraudulently Increase Defendants' Profits and Revenues

210. Not everyone was fooled by JUUL's deception, particularly JUUL's competitors in the e-cigarette market. Altria recognized JUUL's tactics for what they were, designed to addict children, and made this clear in a public letter to the FDA on October 25, 2018. Altria even displayed this letter on its website, disclaiming the very marketing and advertising tactics JUUL relied on. At this time, Altria had apparently concluded that it could not out-compete JUUL—that JUUL's massive market share was too great to overcome. Altria informed the FDA that it was exiting the market for pod-based e-cigarettes, on the grounds that these products contributed to the youth vaping epidemic.

211. Unfortunately, Altria's purported concern for the public health was short-lived. A mere two months after publicly condemning JUUL's tactics for targeting youth, in December of 2018, Altria once again chose to place profits before the public health by making a \$12.8 billion equity investment in JUUL, the largest equity investment in US history. Having long followed JUUL's market share dominance with envy, Altria decided to go from a competitor to a co-conspirator. Altria and JUUL thus formed a RICO enterprise—the JUUL Enterprise—with the goal of preserving, and profiting from, JUUL's ill-gotten market share.

212. The JUUL Enterprise recognized that one of the keys to preserving JUUL's market share was to continue to falsely deny that JUUL marketed its tobacco products to youth. Thus, in furtherance of their Enterprise, JUUL and Altria repeatedly made statements denying that minors were intended targets for JUUL's product and asserting that JUUL's product was really created and designed as a smoking cessation device, intended from the start for “switchers” (existing smokers who are open to vaping). These statements are false, and constitute mail and wire fraud, predicate acts under RICO.

1 213. Thus, at all relevant times, each Defendant was aware of the conduct of the JUUL
2 Enterprise, was a knowing and willing participant in that conduct, and reaped profits from that
3 conduct in the form of sales and distribution of JUUL products.

4 214. The persons engaged in the JUUL Enterprise are systematically linked through
5 contractual relationships, financial ties, and continuing coordination of activities. The Altria
6 Defendants have invested \$12.8 billion in JUUL—the largest equity investment in United States
7 history. This investment gives Altria a 35% stake in JUUL.

8 215. Altria has already publicly acknowledged that under the terms of its financial
9 relationship with JUUL, Altria will provide its considerable legal, regulatory and lobbying
10 expertise to help JUUL navigate its relationship with regulators. Presumably this would also
11 include former Commissioner Gottlieb’s agency, the FDA. After receiving Altria’s October letter
12 criticizing JUUL’s tactics, and learning of Altria’s \$12.8 billion investment, FDA Commissioner
13 Gottlieb was outraged and demanded a meeting. Commissioner Gottlieb described this meeting
14 as “difficult” and “did not come away with any evidence that public health concerns drove
15 Altria’s decision to invest in JUUL, and instead sa[id] it looks like a business decision.” Roughly
16 one month later, he abruptly resigned his position.

17 216. There is regular communication between JUUL and the Altria Defendants in
18 which information regarding Defendants’ scheme to protect, maintain and expand JUUL’s
19 market share is shared. Typically, this communication occurred, and continues to occur, through
20 the use of the wires and the mail in which Defendants share information regarding the operation
21 of the JUUL Enterprise and its cover-up of JUUL’s efforts to target and addict youth.
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23
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26

1 217. The JUUL Enterprise functions as a continuing unit for the purposes of executing
2 accomplishing its objectives, and when issues arise, each member of the Enterprise agrees to take
3 actions to support the Enterprise.

4 218. Each Defendant participated in the operation and management of the JUUL
5 Enterprise by directing its affairs as described herein. Altria's \$12.8 billion investment gives it a
6 35% ownership stake in JUUL, and allows it to appoint a third of its board. In a sign of Altria's
7 management influence and control, last month, JUUL's CEO resigned to be replaced by a career
8 Altria executive, K.C. Crosthwaite. Mr. Crosthwaite had most recently served as the vice
9 president and chief growth officer of Altria Client Services LLC, overseeing the company's
10 work, including digital marketing, packaging design & innovation, product development, and
11 safety, health, and environmental affairs. Crosthwaite is intimately familiar with Big Tobacco's
12 practices, having previously served as the president and CEO of Phillip Morris USA, the vice
13 president and general manager at Marlboro, and the vice president of strategy and business
14 development of at Altria Client Services LLC. In addition, Joe Murillo, who previously headed
15 regulatory affairs for Altria, is now JUUL's chief regulatory officer. A 24-year career Altria
16 executive, Murillo also served as the President and General Manager of Defendant Nu Mark
17 LLC
18
19

20 219. While Defendants participate in, and are members of, the JUUL Enterprise, they
21 have an existence separate from the Enterprise, including distinct legal statuses, affairs, offices
22 and roles, officers, directors, employees, and individual personhood.

23 220. Without the willing participation of each Defendant, the JUUL Enterprise's
24 common course of conduct would not be successful.
25
26

1 **C. Predicate Acts: Mail and Wire Fraud**

2 221. To carry out, or attempt to carry out, the objectives of the JUUL Enterprise, the
3 members of the Enterprise, each of whom is a person associated-in-fact with the Enterprise, did
4 knowingly conduct or participate in, directly or indirectly, the affairs of the Enterprise through a
5 pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and
6 1962(c), and employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341
7 (mail fraud) and § 1343 (wire fraud).
8

9 222. Specifically, the members of the JUUL Enterprise have committed, conspired to
10 commit, and/or aided and abetted in the commission of, at least two predicate acts of
11 racketeering activity (i.e., violations of 18 U.S.C. §§ 1341 and 1343), within the past ten years.

12 223. The multiple acts of racketeering activity which the members of the JUUL
13 Enterprise committed, or aided or abetted in the commission of, were related to each other, posed
14 a threat of continued racketeering activity, and therefore constitute a “pattern of racketeering
15 activity.”
16

17 224. The racketeering activity was made possible by the Enterprise’s regular use of the
18 facilities, services, and employees of the Enterprise.

19 225. The members of the JUUL Enterprise participated in the Enterprise by using mail,
20 telephone, and the internet to transmit mailings and wires in interstate or foreign commerce.
21

22 226. The members of the JUUL Enterprise used, directed the use of, and/or caused to
23 be used, thousands of interstate mail and wire communications in service of the Enterprise’s
24 objectives through common misrepresentations, concealments, and material omissions.

25 227. In devising and executing the objectives of the JUUL Enterprise, its members
26 devised and knowingly carried out a material scheme and/or artifice to defraud the public by

1 denying that JUUL's products were marketed to youth, and that JUUL was really created and
 2 designed as a smoking cessation device.

3 228. For the purpose of furthering its desire to preserve and increase its market share,
 4 even at the expense exposing and addicting children to nicotine, the JUUL Enterprise committed
 5 these racketeering acts, which number in the thousands, intentionally and knowingly with the
 6 specific intent to advance its objectives.
 7

8 229. The JUUL Enterprise's predicate acts of racketeering (18 U.S.C. § 1961(1))
 9 include, but are not limited to:

10 A. Mail Fraud: the JUUL Enterprise violated 18 U.S.C. § 1341 by sending or
 11 receiving, or by causing to be sent and/or received, fraudulent materials via U.S.
 12 mail or commercial interstate carriers for the purpose of deceiving the public
 13 regarding its efforts to market to youth and the true purpose and design behind its
 14 products.

15 B. Wire Fraud: The JUUL Enterprise violated 18 U.S.C. § 1343 by transmitting
 16 and/or receiving, or by causing to be transmitted and/or received, fraudulent
 17 materials by wire for the purpose of deceiving the public regarding its efforts to
 18 market to youth and the true purpose and design behind its products.

19 The JUUL Enterprise falsely and misleadingly used the mails and wires in violation of 18 U.S.C.
 20 § 1341 and § 1343. Illustrative and non-exhaustive examples include the following:
 21

22 A. "JUUL Labs was founded by former smokers, James and Adam, with the goal of
 23 improving the lives of the world's one billion adult smokers by eliminating cigarettes.
 24 We envision a world where fewer adults use cigarettes, and where adults who smoke
 25 cigarettes have the tools to reduce or eliminate their consumption entirely, should they so
 26 desire."²⁶²;

B. "JUUL Labs, which exists to *help* adult smokers switch off of combustible
 cigarettes."²⁶³;

²⁶² *Our Mission*, *supra* note 184.

²⁶³ *Id.*

1 C. “JUUL was designed with adult smokers in mind. . . . JUUL provides satisfaction
2 to meet the standards of adult smokers looking to switch from smoking cigarettes.”²⁶⁴;

3 D. “Our Intent[:] . . . [W]e believe that vaping can have a positive impact when used
4 by adult smokers, and can have a negative impact when used by nonsmokers. Our goal is
to maximize the positive and reduce the negative.”²⁶⁵;

5 E. “It’s a really, really important issue. We don’t want kids using our products.”²⁶⁶;

6 F. “We market our products responsibly, following strict guidelines to have material
7 directly exclusively toward adult smokers and never to youth audiences.”²⁶⁷ ;

8 G. “We don’t want anyone who doesn’t smoke, or already use nicotine, to use JUUL
9 products. We certainly don’t want youth using the product. It is bad for public health, and
10 it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth
from initiating on nicotine. To paraphrase Commissioner Gottlieb, we want to be the off-
11 ramp for adult smokers to switch from cigarettes, not an on-ramp for America’s youth to
initiate on nicotine. We won’t be successful in our mission to serve adult smokers if we
12 don’t narrow the on-ramp. . . . Our intent was never to have youth use JUUL products.
But intent is not enough, the numbers are what matter, and the numbers tell us underage
use of e-cigarette products is a problem. We must solve it.”²⁶⁸;

13 H. “We are taking significant action to prepare for a future where adult smokers
14 overwhelmingly choose non-combustible products over cigarettes by investing \$12.8
billion in JUUL, a world leader in switching adult smokers We have long said that
15 providing adult smokers with superior, satisfying products with the potential to reduce
harm is the best way to achieve tobacco harm reduction.”²⁶⁹;

16 I. “First of all, I’d tell them that I’m sorry that their child’s using the product. It’s
17 not intended for them. I hope there was nothing that we did that made it appealing to
18 them. As a parent of a 16-year-old, I’m sorry for them, and I have empathy for them, in
terms of what the challenges they’re going through.”²⁷⁰;

20 ²⁶⁴ *Consumer Update: 9/19*, JUUL Labs, Inc. (2019), <https://newsroom.juul.com/consumer-update-9-19/> (last
21 visited Nov. 8, 2019).

22 ²⁶⁵ *JUUL*, JUUL Labs, Inc. (2019), <https://www.juul.com/> (last visited Nov. 8, 2019).

23 ²⁶⁶ Angelica LaVito, *Nearly one-quarter of teens are using pot*, CNBC (Dec. 14, 2017),
<https://www.cnbc.com/2017/12/13/marijuana-and-nicotine-vaping-popular-among-teens-according-to-study.html>
(Interview with Ashely Gould, JUUL Chief Administrative Officer).

24 ²⁶⁷ Jackler et al., *supra* note 40 (citing a JUUL social media post from March 14, 2018).

25 ²⁶⁸ *JUUL Labs Action Plan*, *supra* note 164 (statement of Ken Burns, former CEO of JUUL).

26 ²⁶⁹ *Altria Minority Investment*, *supra* note 165 (statement of Howard Willard, Altria Chairman and Chief Executive
Officer).

²⁷⁰ Angelica LaVito, *As Juul grapples with teen vaping ‘epidemic,’ CEO tells parent ‘I’m sorry’*, CNBC (July 13,
2019), <https://www.cnbc.com/2019/07/13/as-juul-deals-with-teen-vaping-epidemic-ceo-tells-parents-im-sorry.html>.

1 J. “We never wanted any non-nicotine user, and certainly nobody under the legal
2 age of purchase, to ever use Juul products. . . . That is a serious problem. Our company
has no higher priority than combatting underage use.”²⁷¹;

3 K. “We have no higher priority than to prevent youth usage of our products which is
4 why we have taken aggressive, industry leading actions to combat youth usage.”²⁷²;

5 L. James Monsees, one of the company’s co-founders, said selling JUUL products to
6 youth was “antithetical to the company’s mission.”²⁷³;

7 M. “Our focus is and will remain entirely on helping adult smokers switch away from
combustible cigarettes, the leading cause of preventable death in the world.”²⁷⁴;

8 N. “We have never marketed to youth and we never will.”²⁷⁵

9 230. The mail and wire transmissions described herein were made in furtherance of
10 Defendants’ scheme and common course of conduct designed to cover-up JUUL’s marketing to
11 youth, thereby increasing or maintaining JUUL’s market share, resulting in corresponding high
12 profits for all Defendants.
13

14 231. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate
15 wire facilities have been deliberately hidden and cannot be alleged without access to Defendants’
16 books and records. However, Plaintiff has described the types of predicate acts of mail and/or
17 wire fraud, including the specific types of fraudulent statements upon which, through the mail
18 and wires, the JUUL Enterprise engaged in fraudulent activity in furtherance of its scheme.
19
20

21 ²⁷¹ *Examining JUUL’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the House Committee on*
22 *Oversight and Reform Subcommittee on Economic and Consumer Policy* at 1 (July 25, 2019),
<https://docs.house.gov/meetings/GO/GO05/20190725/109846/HHRG-116-GO05-Wstate-MonseesJ-20190725.pdf>
23 (testimony of JUUL Founder James Monsees).

24 ²⁷² *Our Actions to Combat Underage Use*, JUUL Labs, Inc. (Aug. 29, 2019), [https://newsroom.juul.com/our-](https://newsroom.juul.com/our-actions-to-combat-underage-use/)
actions-to-combat-underage-use/ (JUUL statement in response to lawsuits).

25 ²⁷³ Richtel & Kaplan, *supra* note 103.

26 ²⁷⁴ *Philip Morris and Altria Are in Talks to Merge*, N.Y. Times (Aug. 27, 2019), (statement made by Joshua Raffel,
JUUL spokesperson).

²⁷⁵ Michael Hiltzik, *Column: Studies show how Juul exploited social media to get teens to start vaping*, L.A. Times
(Sept. 24, 2019), <https://www.latimes.com/business/story/2019-09-24/hiltzik-juul-target-teens> (statement made on
behalf of JUUL).

1 232. The members of the Enterprise have not undertaken the practices described herein
2 in isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. §
3 1962(d), the members of the JUUL Enterprise conspired to violate 18 U.S.C. § 1962(c), as
4 described herein. Various other persons, firms, and corporations, including third-party entities
5 and individuals not named as defendants in this Complaint, have participated as co-conspirators
6 with Defendants and the members of the JUUL Enterprise in these offenses and have performed
7 acts in furtherance of the conspiracy to increase or maintain revenue, maintain or increase market
8 share, and/or minimize losses for the Defendants and their named and unnamed co-conspirators
9 throughout the illegal scheme and common course of conduct.
10

11 233. The members of the JUUL Enterprise aided and abetted others in the violations of
12 the above laws.
13

14 234. To achieve their common goals, the members of the Enterprise hid from Plaintiff
15 and the public: (1) the fraudulent nature of the JUUL Enterprise scheme; (2) the fraudulent
16 nature of statements made by the JUUL Defendant regarding its efforts to target youth and the
17 nature of its product; and (3) the true nature and objective of the relationship between the
18 members of the Enterprise.
19

20 235. Each member of the JUUL Enterprise, with knowledge and intent, agreed to the
21 overall objectives of the schemes and participated in the common course of conduct. Indeed, for
22 the conspiracy to succeed, each of the member of the JUUL Enterprise had to agree to conceal
23 their fraudulent scheme.
24

25 236. The members of the JUUL Enterprise knew, and intended that, the public would
26 rely on the material misrepresentations and omissions made by them.

237. As described herein, the members of the JUUL Enterprise engaged in a pattern of related and continuous predicate acts for years. The predicate acts constituted a variety of unlawful activities, each conducted with the common purpose of maintaining JUUL's ill-gotten market share and thereby continuing to receive significant monies and revenues from the public, including youth, based on their misconduct.

238. The predicate acts also had the same or similar results, participants, victims, and methods of commission.

239. The predicate acts were related and not isolated events.

240. Defendants' fraudulent concealment was material to Plaintiff and the public. The pattern of racketeering activity described above is currently ongoing and open-ended, and threatens to continue indefinitely unless this Court enjoins the racketeering activity.

D. Plaintiff Has Been Damaged by Defendants' RICO Violations

241. Plaintiff has been injured by Defendants' predicate acts. The repeated misstatements by the Defendants denying that JUUL marketed to youth and addicted children to nicotine serve to preserve JUUL's market share—a market share that is based upon children purchasing JUUL's tobacco products. The creation and maintenance of this youth e-cigarette market directly harms Plaintiff by imposing costs on its business and property.

242. Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly and proximately caused injuries and damages to Skagit County, its community, and the public, and the County is entitled to bring this action for three times its actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Entering an Order that the conduct alleged herein constitutes a public nuisance

2. Entering an Order that the Defendants are jointly and severally liable;

3. Entering an Order requiring the Defendants to abate the public nuisance described

4. Enjoining Defendants from engaging in further actions causing or contributing to

5. Awarding equitable relief to fund prevention education and addiction treatment;

6. Awarding actual and compensatory damages;

7. Awarding statutory damages in the maximum amount permitted by law;

8. Awarding reasonable attorneys' fees and costs of suit;

9. Awarding pre-judgment and post-judgment interest; and

10. Such other and further relief as the Court deems just and proper under the

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

RESPECTFULLY SUBMITTED this 18th day of November, 2019.

SKAGIT COUNTY

KELLER ROHRBACK L.L.P.

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Skagit County Prosecuting Attorney

By /s/ Derek W. Loeser
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By /s/ Melinda Miller
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